



# Another Pair of Eyes and a Fresh Look

Why You Should Focus  
and Refocus on Safety  
and Health  
Compliance

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**Miller & Martin PLLC**



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**Giving Instructions is  
one of the most  
important skills in the  
classroom**



**“There will be six designated yawning breaks during my presentation. Please pace your boredom accordingly.”**

# OSHA

- Occupational Safety and Health Administration
- Occupational Safety and Health Act of 1970 (“OSH Act”)
  - Goal: “...To ensure so far as possible every working man and woman in the Nation safe and healthful working conditions...”
- Even one single employee subjects employers to the OSH Act

# OSHA (...cont.)

- In most states, like Georgia, OSHA is the primary enforcement authority for employers and their employees. In other states OSHA delegates its authority to the State (example: Tennessee = TOSHA). OSHA audits these state programs regularly.



# What is TOSHA?

- TOSHA: Tennessee Occupational Safety and Health Administration
- In Tennessee, Federal OSHA works indirectly through OSHA
- TOSHA's procedures for identifying worksite violations are substantially identical to OSHA's — Some procedural differences, too — 15 workdays (Federal) vs. 20 calendar days



# OSHA HOT TOPICS

These new initiatives  
can get you in trouble  
if you are not  
prepared!





# OSHA Budget Requests More Funding For Enforcement

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# OSHA Budget Requests More Funding For Enforcement

OSHA has requested \$212.7 million in funding for enforcement in fiscal year (FY) 2019, representing an increase of \$6.1 million, or just under 3 percent, over the FY 2018 levels. However, the total requested budget for FY 2019 is identical to the 2018 level, meaning that the agency shifted requested money away from other areas to fund the increase in enforcement dollars. Overall, OSHA requested \$549,033,000 and is seeking a change from 2018 funding levels in only five of its ten budget categories: enforcement, federal compliance assistance, training grants, technical support, and executive direction. The agency requested the same amount of money and staff for safety and health standards, whistleblower programs, state programs, state consultation, and safety and health statistics that those areas received in 2018.

In requesting the funding increase for 2019, OSHA pointed to the elimination of 33 compliance assistance positions due to budget constraints since 2013 and noted that it seeks to restore 24 of those positions in order to “broaden its reach, assistance, and support to small businesses and other employers working to comply with OSHA requirements and protect their workers.” The agency also plans to add eight positions to its VPP efforts, allowing it to dedicate one VPP staff person to each OSHA region.

OSHA states that it plans to focus its outreach and cooperative efforts in six key areas: construction, health care, oil and gas, communication tower erection and maintenance, grain handling, and temporary workers. In FY 2019, the agency also plans to work to enhance safety and health training in career and technical education programs, pursue a national cooperative effort on improving safety culture in health care, and increase outreach on highway workzone safety.

# OSHA Budget Requests More Funding For Enforcement, Cont.

## **Targeted Enforcement Efforts**

- an additional 42 staff members.

- The agency says it plans to conduct 30,840 inspections in 2018, concentrating on “the highest-impact and most complex inspections at the highest-risk workplaces.”

- In 2019, OSHA will launch a new weighting system to measure and prioritize its enforcement and other essential activities. A key focus for OSHA’s enforcement efforts is identifying and addressing trenching and excavation hazards in construction; the agency’s goal is to abate 1,270 of these hazards in FY 2018 and 1,400 in 2019.

The agency projects that responding to severe injury reports received from employers will continue to increase the proportion of unprogrammed (unplanned) inspections it conducts, noting that inspections in response to severe injuries typically take twice as long to complete as programmed (planned) inspections and therefore reduce the resources available for enforcement in programmed emphasis areas. OSHA states that the additional enforcement staff it plans to hire will help to mitigate this effect.

## **Compliance Assistance Prioritized**

Also slated to receive more money in FY 2019 are OSHA’s federal compliance assistance efforts, for which OSHA requested a \$5.1 million, or 7%, increase over the 2018 levels. Federal compliance assistance includes programs that seek to aid small businesses, information and materials provided through the agency’s website and other channels, the Voluntary Protection Programs (VPP), strategic partnerships and alliances, and training and outreach through the OSHA Training Institute.

# OSHA Budget Requests More Funding For Enforcement, Cont.

## **Training Grants Eliminated**

In order to balance out the increases, OSHA has eliminated all funding for its Susan Harwood Training Grant program, which received around \$10.5 million in both 2017 and 2018. The program, established in 1978, provided 1- to 5-year competitive grants to nonprofit organizations to develop and conduct occupational safety and health training programs.

In its budget justification, OSHA noted that it “has no evidence that the [Susan Harwood] program is effective . . . and it is not clear that the training funded by these grants would not happen absent the Federal subsidy,” while highlighting the other outreach programs and tools it offers and stating that “training and outreach programs delivered directly by the agency can provide information more efficiently.” The agency states that the increased funding it has requested for federal compliance assistance programs will allow it to conduct more training for employers and workers and fill in any gap left by the elimination of the Susan Harwood Training Grants.

## **Other Areas**

Funding for technical support is reduced by \$537,000 from the 2018 levels, while executive direction is slated to be cut by \$266,000.



# Rulemaking Delays



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## President Trump Issues Executive Order Aimed at Reducing Regulation and Controlling Regulatory Costs

On January 30, 2017, *President Trump* issued *Executive Order No. 13771*, entitled “*Reducing Regulation and Controlling Regulatory Costs.*”

The Order provides:

- For Fiscal Year 2017 (which ends September 30, 2017):
  - For each new “regulation” published for notice and comment “or otherwise promulgated,” the agency in question must “identify” two existing regulations to be repealed. Notably, the Order does not require the repeal to be concurrent with the publication or promulgation of the new regulation.
  - For Fiscal Year 2017, each agency must ensure that the total incremental costs of all new and repealed regulations shall not exceed zero, unless otherwise required by law or as consistent with the advice of the Office of Management and Budget (OMB). The Order does not specify whether the costs in question represent costs to the agency, costs to the government or total societal costs. It also does not provide any guidance on how to calculate such costs.
  - To the extent permitted by law, the costs of any new regulations shall be offset by the elimination of costs associated with at least two existing regulations. Once again, the Order provides no guidance on what constitute costs of a regulation or how to calculate such costs.
  - The OMB is directed to provide agencies with guidance on how to implement the Order.

# Regulatory Freeze Highlights

## Executive Agencies directed as follows:

- Send no regulations to OFR until reviewed and approved by agency head appointed by President
- Immediately withdraw regulations sent to OFR but not published in Federal Register
- Temporarily postpone effective date of regulations not yet in effect

\*Regulations relating to emergency situations or health, safety, financial or national security matters are subject to exemptions

# OSHA's Crystalline Silica Rules

## Construction

**All construction employers covered by the standard are required to:**

- Establish and implement a **written exposure control plan** that identifies tasks that involve exposure and methods used to protect workers, including procedures to restrict access to work areas where high exposures may occur.
- Designate a **competent** person to implement the written exposure control plan.
- Restrict **housekeeping** practices that expose workers to silica where feasible alternatives are available.
- Offer **medical exams**—including chest X-rays and lung function tests—every three years for workers who are required by the standard to wear a respirator for 30 or more days per year.
- Train workers** on work operations that result in silica exposure and ways to limit exposure.
- Keep records** of workers' silica exposure and -medical exams.

**2,000,000** construction workers are exposed to respirable crystalline silica

**Can cause: silicosis, lung cancer, respiratory diseases, and kidney disease.**

Enforcement scheduled to begin: June 23, 2018

# OSHA's Crystalline Silica Rules

## General Industry

295,000 workers exposed to respirable crystalline silica

**The standard for general industry and maritime requires employers to:**

- **Measure** the amount of silica that workers are exposed to if it may be at or above an action level of 25 µg/m<sup>3</sup> (micrograms of silica per cubic meter of air), averaged over an 8-hour day;
- **Protect** workers from respirable crystalline silica exposures above the permissible exposure limit of 50 µg/m<sup>3</sup>, averaged over an 8-hour day;
- **Limit workers' access** to areas where they could be exposed above the PEL;
- **Use dust controls** to protect workers from silica exposures above the PEL;
- **Provide respirators** to workers when dust controls cannot limit exposures to the PEL;
- **Restrict** housekeeping practices that expose workers to silica where feasible alternatives are available;
- **Establish and implement a written exposure control plan** that identifies tasks that involve exposure and methods used to protect workers;
- **Offer medical exams** — including chest X-rays and lung function tests — every three years for workers exposed at or above the action level for 30 or more days per year;
- **Train workers** on work operations that result in silica exposure and ways to limit exposure; and
- **Keep records** of workers' silica exposure and medical exams.

**Number of Workers Exposed to Respirable Crystalline Silica in Selected General Industry/ Maritime Sectors**

Industry sector	Workers currently exposed	Workers currently exposed above the new PEL
Asphalt Roofing Materials	3,158	1,410
Concrete Products	32,981	9,391
Cut Stone	9,429	5,243
Dental Laboratories	31,105	864
Foundries	34,591	12,173
Jewelry	6,772	2,434
Porcelain Enameling	4,113	1,654
Pottery	6,269	2,496
Railroads	16,895	5,340
Ready-Mix Concrete	27,123	19,941
Shipyards	3,038	2,228
Structural Clay Products	7,893	3,198
Support Activities for Oil and Gas Operations	16,960	11,207





# OSHA National News Release

U.S. Department of Labor

April 6, 2017

## OSHA to delay enforcing crystalline silica standard in the construction industry

**WASHINGTON** - The U.S. Department of Labor's [Occupational Safety and Health Administration](#) today announced a delay in enforcement of the [crystalline silica standard](#) that applies to the construction industry to conduct additional outreach and provide educational materials and guidance for employers.

The agency has determined that additional guidance is necessary due to the unique nature of the requirements in the construction standard. Originally scheduled to begin June 23, 2017, enforcement will now begin Sept. 23, 2017.

OSHA expects employers in the construction industry to continue to take steps either to come into compliance with the new permissible exposure limit, or to implement specific dust controls for certain operations as provided in Table 1 of the standard. Construction employers should also continue to prepare to implement the standard's other requirements, including exposure assessment, medical surveillance and employee training.



# Hazard Assessment and General Duty



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# General Duties

29 U.S.C. §654

- Each Employer shall:
  - Furnish to each of his/her employees a place of employment which is free from recognized hazards that cause or are likely to cause death or serious physical harm
  - Comply with OSHA standards
- Each Employee Shall:
  - comply with OSHA standards and all rules, regulations, and orders issued pursuant to OSHA which are applicable to his/her own actions and conduct

# Hazard Assessment

29 C.F.R. 1915.152

- Wherever employees are exposed to work activity hazards that require use PPE, the employer must ensure that the employee use the appropriate PPE.



# Hazard Assessment, Continued

29 C.F.R. 1915.152

- The employer must assess the work activity to determine whether there are hazards present and necessary equipment



# Hazard Assessment, Continued

29 C.F.R. 1915.152



- ✓ Select PPE
- ✓ Communicate selection to affected employees
- ✓ Ensure PPE properly fits
- ✓ Document: occupation, assessment date, & person performing assessment
- ✓ Training







## How OSHA's New 2016 Workplace Injury Reporting Rule Affects You



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# OSHA Final 2016 Rule to Improve Tracking of Workplace Injuries and Illnesses



DEPARTMENT OF LABOR

Occupational Safety and Health  
Administration

29 CFR Parts 1904 and 1902

[Docket No. OSHA–2013–0023]

RIN 1218–AC49

Improve Tracking of Workplace  
Injuries and Illnesses; Correction

**AGENCY:** Occupational Safety and Health  
Administration (OSHA), DOL.

**ACTION:** Final rule; correction.

**SUMMARY:** OSHA published in the  
Federal Register of May 12, 2016, a final  
rule revising its Recording and  
Reporting Occupational Injuries and  
Illnesses Regulation. In the rule, a  
paragraph was inadvertently removed.  
This document reinserts that paragraph.  
**DATES:** Effective: August 10, 2016.

**FOR FURTHER INFORMATION CONTACT:** For  
press inquiries: Frank Meilinger, Office  
of Communications, Room N–3647,  
OSHA, U.S. Department of Labor, 200  
Constitution Avenue NW., Washington,  
DC 20210; telephone (202) 693–1999;  
email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

For general and technical information:  
Miriam Schoenbaum, Office of  
Statistical Analysis, Room N–3507,  
OSHA, U.S. Department of Labor, 200  
Constitution Avenue NW., Washington,  
DC 20210; telephone (202) 693–1841;  
email: [schoenbaum.miriam@dol.gov](mailto:schoenbaum.miriam@dol.gov).

**SUPPLEMENTARY INFORMATION:** OSHA  
published in the Federal Register of  
May 12, 2016, a final rule revising its  
Recording and Reporting Occupational  
Injuries and Illnesses regulation (92 FR  
29624).

This document was prepared under  
the direction of David Michaels, Ph.D.,  
MPH, Assistant Secretary of Labor for  
Occupational Safety and Health. It is  
issued under Sections 8 and 24 of the  
Occupational Safety and Health Act (29  
U.S.C. 657, 673), Section 553 of the  
Administrative Procedure Act (5 U.S.C.  
553), and Secretary of Labor's Order No.  
41–2012 (77 FR 3912 (Jan. 25, 2012)).

*OSHA injury and illness records? Yes,  
your employees, former employees,  
their personal representatives, and their  
authorized employee representatives  
have the right to access the OSHA injury  
and illness records, with some  
limitations, as discussed below.*

*(i) Who is an authorized employee  
representative? An authorized employee  
representative is an authorized  
collective bargaining agent of  
employees.*

*(ii) Who is a “personal  
representative” of an employee or  
former employee? A personal  
representative is:*

*(A) Any person that the employee or  
former employee designates as such, in  
writing; or*

*(B) The legal representative of a  
deceased or legally incapacitated  
employee or former employee.*

*(iii) If an employee or representative  
asks for access to the OSHA 300 Log,  
when do I have to provide it? When an  
employee, former employee, personal  
representative, or authorized employee  
representative asks for copies of your  
current or stored OSHA 300 Log(s) for  
an establishment the employee or  
former employee has worked in, you  
must give the requester a copy of the  
relevant OSHA 300 Log(s) by the end of  
the next business day.*

*(iv) May I remove the names of the  
employees or any other information  
from the OSHA 300 Log before I give  
copies to an employee, former  
employee, or employee representative?  
No, you must leave the names on the  
300 Log. However, to protect the privacy  
of injured and ill employees, you may  
not record the employee's name on the  
OSHA 300 Log for certain “privacy  
concern cases,” as specified in  
§ 1904.29(b)(6) through (9).*

*(v) If an employee or representative  
asks for access to the OSHA 301  
Incident Report, when do I have to  
provide it? (A) When an employee,  
former employee, or personal  
representative asks for a copy of the  
OSHA 301 Incident Report describing  
an injury or illness to that employee or*

# New Rule

- Issued:  
May 12, 2016
- Effective:  
January 1, 2017
- 1st Submission Deadline  
(as extended by OSHA):  
December 1, 2017

# Purpose: Modernize Data Collection

300 logs, 300A, 301's

- Create the largest publicly available data set on work injuries and illnesses.
- Allow for researchers to mine the data in innovative ways.
- Identify trends that will allow employers to prevent future injuries and allow OSHA to come visit you.



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# Purpose: Increase Visibility

- Serve as resource for prospective employees.
- “Nudge” employers to improve workplace safety through public disclosure.
- Allow companies to bench mark against industry leaders.
- Give the public unprecedented access to information.



# Purpose: Target Repeat Offenders

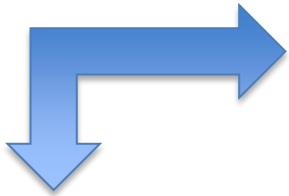
- Data is published by establishment, so it quickly reveals trends and trouble spots.
  - Easy for OSHA to see and target poor performers.
- Provides OSHA with data to improve allocation of resources.

*"Access to injury data will also help OSHA better target compliance assistance and enforcement resources, and enable 'big data' researchers to apply their skills to making workplaces safer."*



Dr. David Michaels, Assistant Secretary of  
Labor for Occupational Safety and Health

# Two Main Components of the Rule



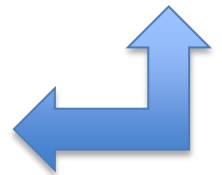
Electronic Reporting



&



Employee Reporting and Retaliation



# Electronic Reporting

## What Stayed the Same?

- The information that is reported.
- The information employers are required to maintain.
- Dollar range of fines for not reporting.
- Exemptions to reporting.

## What's Different?

- The way the information is reported.
- The timing of the reports.
- The information will be made available to the public.



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& MARTIN  
PLLC

- The image displays several OSHA forms used for recording workplace injuries and illnesses. On the left, a large, partially visible word 'ation' is shown. The main focus is on three forms:

  - OSHA's Form 300 (Rev. 01/2004): Summary of Work-Related Injuries and Illnesses**. This form is used to summarize the data from Form 301. It includes sections for identifying the person, describing the case, and classifying the case. It also has a table for recording the number of cases and days away from work by injury type.
  - OSHA's Form 301 (Rev. 01/2004): Injury and Illness Incident Report**. This form is used to report a specific injury or illness. It includes sections for information about the employee, information about the case, information about the physician or other health care professional, and information about the injury or illness.
  - OSHA's Form 302 (Rev. 01/2004): First Aid and Medical Treatment Report**. This form is used to report first aid and medical treatment. It includes sections for information about the employee, information about the case, and information about the first aid and medical treatment.

The forms are shown in various orientations, some overlapping, with a large 'ation' text fragment on the left.



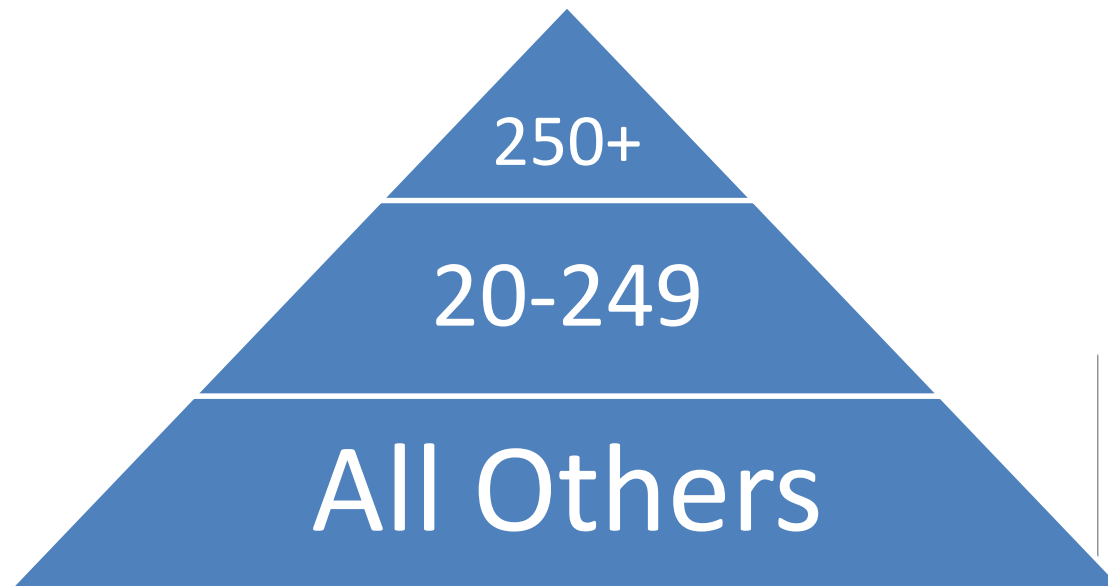
# Three Categories of Employers

1. Establishments with 250 or more employees.
2. Establishments in one of the listed high-risk industries, AND have 20 – 249 employees.
3. All others.



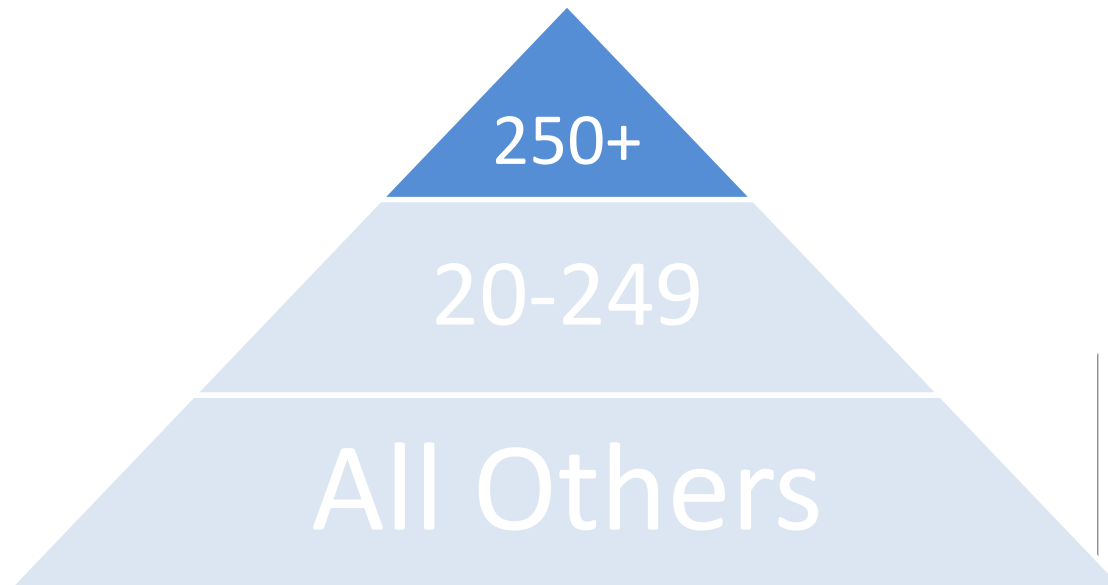
# Determining Your Category

- Each individual employed in the establishment at any time during the year counts as an employee.
- Temporary and seasonal employees are included in the calculation.



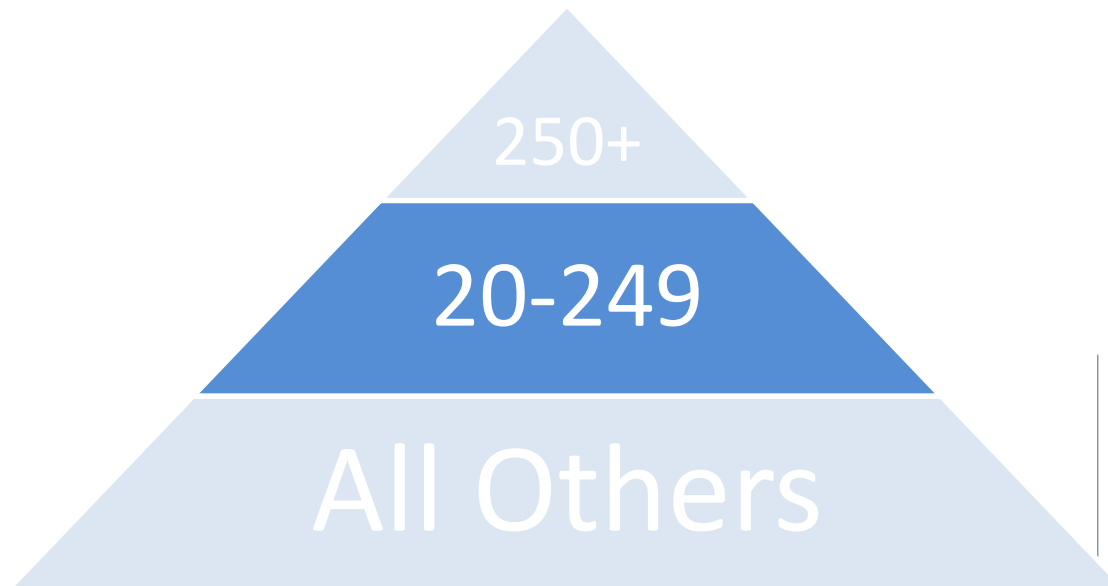
# Category 1: 250+ employees

- All establishments with 250+ employees that are already required to keep occupational injury records pursuant to existing OSHA regulation (29 CFR part 1904)
- Must report: Forms 300, 300A, 301



## Category 2: 20-249 employees

- All establishments with 20-249 employees that are in industries deemed “high risk” by OSHA (based on NAICS code)
- Must report: Form 300A



# List of “High Risk” Industries for Category 2

NAICS	INDUSTRY
11	Agriculture, forestry, fishing and hunting.
22	Utilities.
23	Construction.
31–33	Manufacturing.
42	Wholesale trade.
4413	Automotive parts, accessories, and tire stores.
4421	Furniture stores.
4422	Home furnishings stores.
4441	Building material and supplies dealers.
4442	Lawn and garden equipment and supplies stores.
4451	Grocery stores.
4452	Specialty food stores.
4521	Department stores.
4529	Other general merchandise stores.
4533	Used merchandise stores.
4542	Vending machine operators.
4543	Direct selling establishments.
4811	Scheduled air transportation.
4841	General freight trucking.
4842	Specialized freight trucking.
4851	Urban transit systems.
4852	Interurban and rural bus transportation.
4853	Taxi and limousine service.
4854	School and employee bus transportation.

# “High Risk” Industries, cont’d

NAICS	INDUSTRY
4855	Charter bus industry.
4859	Other transit and ground passenger transportation.
4871	Scenic and sightseeing transportation, land.
4881	Support activities for air transportation.
4882	Support activities for rail transportation.
4883	Support activities for water transportation.
4884	Support activities for road transportation.
4889	Other support activities for transportation.
4911	Postal service.
4921	Couriers and express delivery services.
4922	Local messengers and local delivery.
4931	Warehousing and storage.
5152	Cable and other subscription programming.
5311	Lessors of real estate.
5321	Automotive equipment rental and leasing.
5322	Consumer goods rental.
5323	General rental centers.
5617	Services to buildings and dwellings.
5621	Waste collection.
5622	Waste treatment and disposal.
5629	Remediation and other waste management services.

# “High Risk” Industries, cont’d

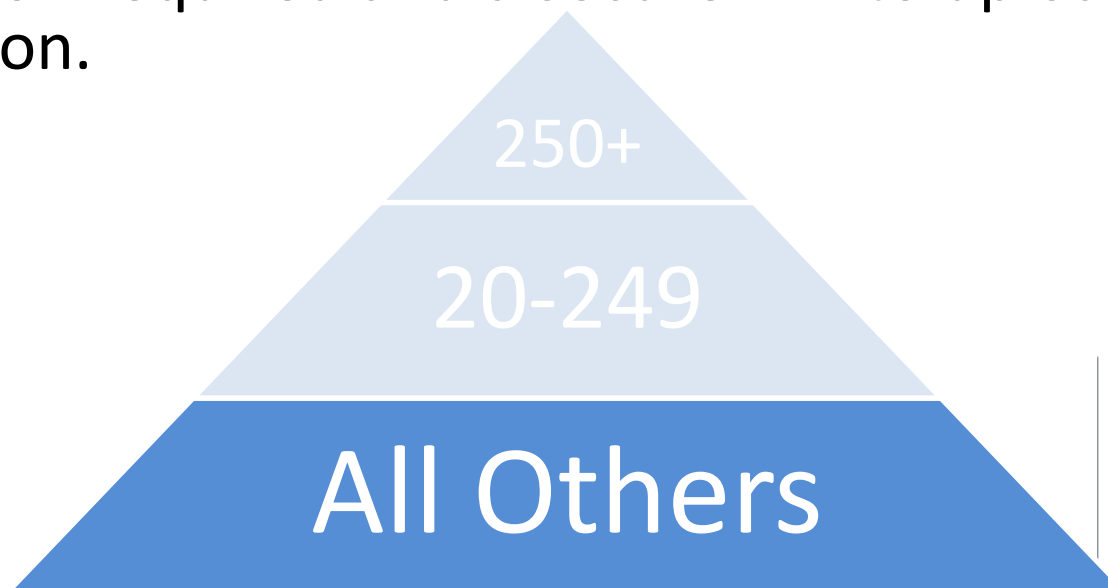
NAICS	INDUSTRY
6219	Other ambulatory health care services.
6221	General medical and surgical hospitals.
6222	Psychiatric and substance abuse hospitals.
6223	Specialty (except psychiatric and substance abuse) hospitals.
6231	Nursing care facilities.
6232	Residential mental retardation, mental health and substance abuse facilities.
6233	Community care facilities for the elderly.
6239	Other residential care facilities.
6242	Community food and housing, and emergency and other relief services.
6243	Vocational rehabilitation services.
7111	Performing arts companies.
7112	Spectator sports.
7121	Museums, historical sites, and similar institutions.
7131	Amusement parks and arcades.
7132	Gambling industries.
7211	Traveler accommodation.
7212	RV (recreational vehicle) parks and recreational camps.
7213	Rooming and boarding houses.
7223	Special food services.
8113	Commercial and industrial machinery and equipment (except automotive and electronic) repair and maintenance.
8123	Dry-cleaning and laundry services.

# Category 3: All Others

Companies not in the designated employee ranges or industries:

- Have no annual electronic reporting requirement.
- Must submit electronic information upon OSHA's request.

OSHA will send a request by mail that includes the information required and a secure link to upload the information.





# What Must Be Reported and When

The rule is phased in over 2 years.

Submission Year	250 or more employees	20-249 employees	All Others	Submission Deadline
2017	Form 300A	Form 300A	No required annual filing	December 1, 2017
2018	Forms 300A, 300, 301	Form 300A	No required annual filing	July 1, 2018

Beginning 2019, and every year thereafter, the submission deadline is March 2 of the year following the reporting year.

# OSHA State Plan States

- The requirements apply to employers in these states.
- These states (including TN) must adopt requirements substantially identical to the requirements in the final rule within 6 months of publication.



*Went into effect: December 1, 2016*

# Employee Reporting

The Rule contains 3 provisions aimed at promoting complete and accurate employee reporting:



1. Employee Notification
2. Reasonable Reporting Procedure
3. No Retaliation

# Notification



Employers must notify employees:

- Of their right to report work-related injury/illness
- That employers are prohibited from retaliation for reporting



This requirement may be met by posting an up to date “OSHA Job Safety and Health – It’s the Law” poster.

# Reporting Procedures

Injury and Illness reporting procedures must:

- Be reasonable
- Not deter or discourage employees from reporting

**Data  
Reporting**



# Retaliation

- Reiterates that an employer may not retaliate against employees for reporting injuries or illnesses.
- Section 11(c) of the OSH Act also prohibits employer discrimination for reporting.





# OSHA's Revised Recordkeeping Rule



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# Updates to OSHA's Recordkeeping Rule

The Occupational Safety and Health Administration's Revised Recordkeeping Rule includes two key changes:

- **First**, the rule updates the list of industries that are exempt from the requirement to routinely keep OSHA injury and illness records, due to relatively low occupational injury and illness rates.
  - The previous list of industries was based on the old Standard Industrial Classification (SIC system) and injury and illness data from the Bureau of Labor Statistics (BLS) from 1996, 1997, and 1998.
  - The new list of industries that are exempt from routinely keeping OSHA injury and illness records is based on the North American Industry Classification System (NAICS) and injury and illness data from the Bureau of Labor Statistics (BLS) from 2007, 2008, and 2009.
  - Note: The new rule retains the exemption for any employer with ten or fewer employees, regardless of their industry classification, from the requirement to routinely keep records.



# Updates to OSHA's Recordkeeping Rule

- **Second**, the rule expands the list of severe work-related injuries that all covered employers **must report** to OSHA. The revised rule retains the current requirement to report all work-related fatalities within 8 hours and adds the requirement to report all work-related in-patient hospitalizations, amputations and loss of an eye within 24 hours to OSHA.

# Changes to recordkeeping requirements: Who is required to keep records? Who is exempt from keeping records?

- OSHA regulations require certain employers to routinely keep records of serious employee injuries and illnesses. However, there are two classes of employers that are partially exempt from routinely keeping records.
- First, employers with ten or fewer employees at all times during the previous calendar year are exempt from routinely keeping OSHA injury and illness records. **OSHA's revised recordkeeping regulation maintains this exemption.**

# Changes to recordkeeping requirements: (...cont.)

- Second, establishments in certain low-hazard industries are also exempt from routinely keeping OSHA injury and illness records. Since 1982, this list has been comprised of establishments in the divisions of retail trade; finance, insurance and real estate; and the service industry if the three year average lost workday case rate for their major industry group was 75 percent or less of the overall three year average of the lost workday case rate for private industry. OSHA's revised recordkeeping regulation provides an updated list of low-hazard industries that are exempt from routinely keeping OSHA injury and illness records. The new list of exempt industries is now classified by North American Industry Classification System (NAICS), which is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing and publishing statistical data related to the U.S. business economy. The injury and illness rate threshold is based on more recent BLS data.



**Starting on January 1,  
2015, the following  
NAICS entities will be  
partially exempt from  
OSHA recordkeeping  
requirements.**



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# Non-Mandatory Appendix A to Subpart B -- Partially Exempt Industries

Employers are not required to keep OSHA injury and illness records for any establishment classified in the following North American Industry Classification System (NAICS), unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or the BLS. All employers, including those partially exempted by reason of company size or industry classification, must report to OSHA any workplace incident that results in a fatality, in-patient hospitalization, amputation, or loss of an eye (see §1904.39).

# Industries That Include Establishments that Would Be Newly Required to Keep Records

NAICS Code	Title of NAICS Code
3118	Bakeries and tortilla manufacturing
4411	Automobile dealers
4413	Automotive parts, accessories, and tire stores
4441	Building material and supplies dealers
4452	Specialty food stores
4453	Beer, wine, and liquor stores
4539	Other miscellaneous store retailers
4543	Direct selling establishments
5311	Lessors of real estate
5313	Activities related to real estate
5322	Consumer goods rental
5324	Commercial and industrial machinery and equipment rental and leasing
5419	Other professional, scientific, and technical services
5612	Facilities support services
5617	Services to buildings and dwellings

# Industries That Include Establishments that Would Be Newly Required to Keep Records (...cont.)

NAICS Code	Title of NAICS Code
5619	Other support services
6219	Other ambulatory health care services
6241	Individual and family services
6242	Community food and housing, and emergency and other relief services
7111	Performing arts companies
7113	Promoters of performing arts, sports, and similar events
7121	Museums, historical sites, and similar institutions
7139	Other amusement and recreation industries
7223	Special food services
8129	Other personal services

# Fatalities and Certain Injuries

## OSHA's Expanding Grasp: Reporting Requirements After January 1, 2015

- Until recently, employers only had to report within 8 hours fatalities and in-patient hospitalizations involving three or more employees. Not anymore.
- As of January 1, 2015, a new OSHA rule expands the employer's reporting obligation considerably.
- Now, employers have 8 hours to report fatalities and 24 hours to report any event that results in amputation, loss of an eye, or even a single in-patient hospitalization.
- The new rule applies even if the workplace incident involves less than three employees and does not result in death.
- To keep up with what will be a significant increase in reports, OSHA is developing a website that allows employees to give notice online:  
[https://www.osha.gov/report\\_online/](https://www.osha.gov/report_online/)





# Labor Unions and OSHA

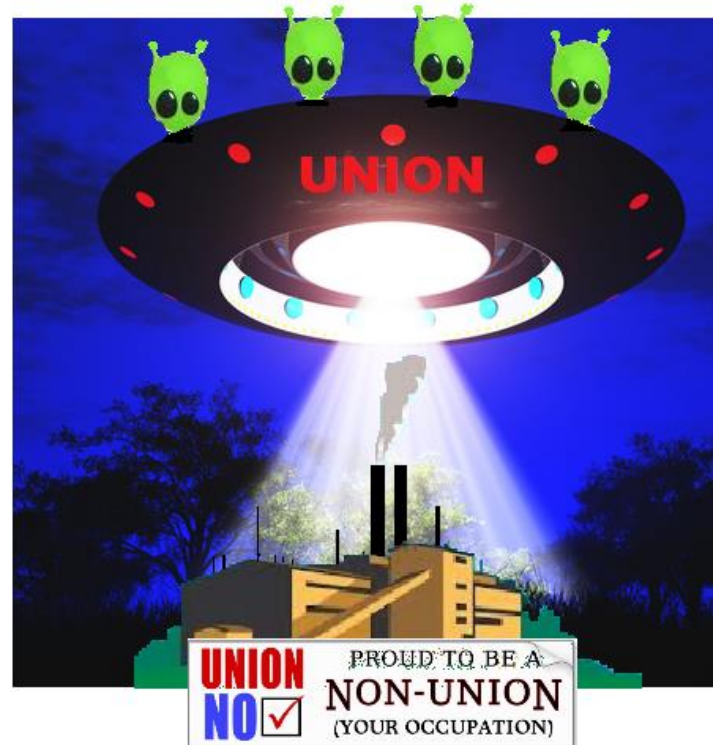


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# Labor Unions at Non-Union Facilities?

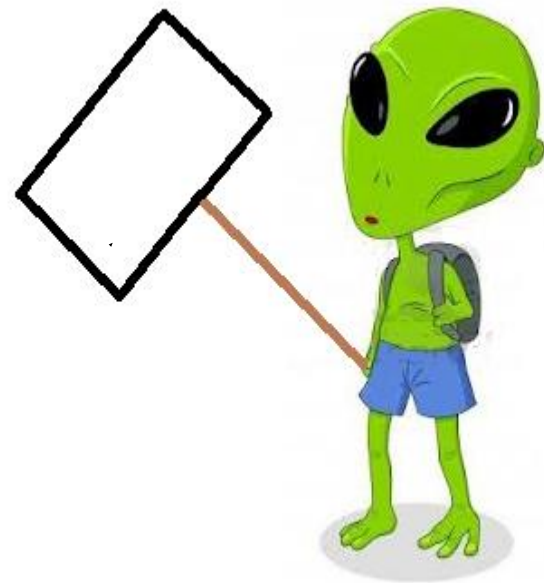
OSHA issued a letter of interpretation (2/21/2013):

- Non-union employees can designate a 3<sup>rd</sup> party of their **choice for walk-around inspections...**
- Including a labor union representative



# Labor Unions at Non-Union Facilities? (...cont.)

- Major change in OSHA policy
- Potential outcomes are cause for concern
- OSHA has given unions a *new organizing tool*



# Labor Unions at Non-Union Facilities? (...cont.)

## Scenario:

- Union-friendly employees file a complaint with OSHA with the intent to cause an inspection
- Now, OSHA will allow the employees to request a union rep to participate in the actual walk-around inspection





# Whistleblower Rules



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# Whistleblower Complaints

**Whistleblowers can now file complaints online with OSHA**

***Agency launches online form to provide workers a new way to file retaliation complaints***

Whistleblowers covered by one of 22 statutes administered by the U.S. Department of Labor's Occupational Safety and Health Administration will now be able to file complaints online. The online form will provide workers who have been retaliated against an additional way to reach out for OSHA assistance online.

"The ability of workers to speak out and exercise their rights without fear of retaliation provides the backbone for some of American workers' most essential protections," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "Whistleblower laws protect not only workers, but also the public at large and now workers will have an additional avenue available to file a complaint with OSHA."

Currently, workers can make complaints to OSHA by filing a written complaint or by calling the agency's 1-800-321-OSHA (6742) number or an OSHA regional or area office. Workers will now be able to electronically submit a whistleblower complaint to OSHA by visiting [www.osha.gov/whistleblower/WBComplaint.html](http://www.osha.gov/whistleblower/WBComplaint.html).

The new online form prompts the worker to include basic whistleblower complaint information so they can be easily contacted for follow-up. Complaints are automatically routed to the appropriate regional whistleblower investigators. In addition, the complaint form can also be downloaded and submitted to the agency in hard-copy format by fax, mail or hand-delivery. The paper version is identical to the electronic version and requests the same information necessary to initiate a whistleblower investigation.

# Whistleblower Complaints

## (...cont.)

OSHA enforces the whistleblower provisions of 22 statutes protecting employees who report violations of various securities laws, trucking, airline, nuclear power, pipeline, environmental, rail, public transportation, workplace safety and health, and consumer protection laws. Detailed information on employee whistleblower rights, including fact sheets and instructions on how to submit the form in hard-copy format, is available online at [www.whistleblowers.gov](http://www.whistleblowers.gov).

# Whistleblower Complaints (...cont.)

## OSHA ONLINE WHISTLEBLOWER COMPLAINT FORM

### Notice of Whistleblower Complaint

**EMERGENCY NOTICE:** Do Not Report an Emergency Using this Form or Email!

To report an emergency, fatality, or imminent life threatening situation please contact our toll free number immediately:

**1-800-321-OSHA (6742)**

**TTY 1-877-889-5627**

Please fill out sections 1 through 30, but [READ THIS](#) first. Items noted with an asterisk (\*) are required in order to accept your submission.



US Department of Labor  
Occupational Safety and Health Administration  
Notice of Whistleblower Complaint

OMB # 1218-0236

### PART 1 - EMPLOYEE INFORMATION

*Required fields denoted by \**

1. Name\*:  First Name  M.I.  Last Name

2. Present Address:

Street\*:

City\*:

State \*:  Select one...

Zip\*:  #####

3. Telephone Numbers\*: (at least one required)

Home: (  ###  )  ###-####

Work: (  ###  )  ###-#### Ext

Cell: (  ###  )  ###-####

4. Email Address:



# Whistleblower Complaints (...cont.)

## Whistleblower Statutes - Filing Time Limits

Environmental and Nuclear Safety Laws	Days to File
<b>Section 11(c) of the Occupational Safety &amp; Health Act (OSHA).</b> [29 U.S.C. §660(c)] Section 11(c) provides protection for employees who exercise a variety of rights guaranteed under the Act, such as filing a safety and health complaint with OSHA, participating in an inspection, etc. <b>29 CFR 1977</b>	30
<b>Asbestos Hazard Emergency Response Act (AHERA).</b> [15 U.S.C. §2651] Protects employees who report violations of the law relating to asbestos in public or private non-profit elementary and secondary school systems. <b>29 CFR 1977</b>	90
<b>Clean Air Act (CAA).</b> [42 U.S.C. §7622] Prohibits retaliation against any employee who reports violations regarding air emissions from area, stationary, and mobile sources. <b>29 CFR 24</b>	30
<b>Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).</b> [42 U.S.C. §9610] a.k.a. "Superfund," prohibits retaliation against any employee who reports alleged violations relating to cleanup of hazardous waste sites, as well as accidents, spills, and other emergency releases of pollutants and contaminants. <b>29 CFR 24</b>	30
<b>Energy Reorganization Act (ERA).</b> [42 U.S.C. §5851] Prohibits retaliation against any employee who reports violations or refuses to engage in violations of the ERA or the Atomic Energy Act. Protected employees include employees of operators, contractors and subcontractors of nuclear power plants licensed by the Nuclear Regulatory Commission, and employees of contractors working with the Department of Energy under a contract pursuant to the Atomic Energy Act. <b>29 CFR 24</b>	180
<b>Federal Water Pollution Control Act (FWPCA).</b> [33 U.S.C. §1367] a.k.a. "Clean Water Act," prohibits retaliation against any employee who reports alleged violations relating to discharge of pollutants into water. <b>29 CFR 24</b>	30
<b>Safe Drinking Water Act (SDWA.)</b> [42 U. S. C. §300j-9(i)] Prohibits retaliation against any employee who reports alleged violations relating to any waters actually or potentially designated for drinking. <b>29 CFR 24</b>	30
<b>Solid Waste Disposal Act (SWDA).</b> [42 U.S.C. §6971] Prohibits retaliation against any employee who reports alleged violations relating to the disposal of solid and hazardous waste (including medical waste) at active and future facilities. This statute is also known as the Resource Conservation and Recovery Act. <b>29 CFR 24</b>	30
<b>Toxic Substances Control Act (TSCA).</b> [15 U.S.C. §2622] Prohibits retaliation against any employee who reports alleged violations relating to industrial chemicals produced or imported into the United States, and supplements the Clean Air Act (CAA) and the Toxic Release Inventory under Emergency Planning & Community Right to Know Act (EPCRA). <b>29 CFR 24</b>	30

# Whistleblower Complaints (...cont.)

Transportation Industry Laws	Days to File
<b>Federal Railroad Safety Act (FRSA).</b> [49 U.S.C §20109] Protects employees of railroad carriers and their contractors and subcontractors who report a hazardous safety or security condition, a violation of any federal law or regulation relating to railroad safety or security, or the abuse of public funds appropriated for railroad safety. In addition, the statute protects employees who refuse to work when confronted by a hazardous safety or security condition. <b>29 CFR 1982</b>	180
<b>International Safe Container Act (ISCA)</b> [46 U.S.C. §80507] Protects employees involved in international shipping who report to the Coast Guard the existence of an unsafe intermodal cargo container or another violation of the Act. <b>29 CFR 1977</b>	60
<b>Moving Ahead for Progress in the 21st Century Act (MAP-21).</b> [49 U.S.C. §30171] Prohibits retaliation by motor vehicle manufacturers, part suppliers, and dealerships against employees for providing information to the employer or the U.S. Department of Transportation about motor vehicle defects, noncompliance, or violations of the notification or reporting requirements enforced by the National Highway Traffic Safety Administration or for engaging in related protected activities as set forth in the provision.	180
<b>National Transit Systems Security Act (NTSSA).</b> [6 U.S.C. §1142] Protects transit employees who report a hazardous safety or security condition, a violation of any federal law relating to public transportation agency safety, or the abuse of federal grants or other public funds appropriated for public transportation. The Act also protects public transit employees who refuse to work when confronted by a hazardous safety or security condition or refuse to violate a federal law related to public transportation safety. <b>29 CFR 1982</b>	180
<b>Pipeline Safety Improvement Act (PSIA).</b> [49 U.S.C. §60129] Protects employees who report violations of federal laws related to pipeline safety and security or who refuse to violate such laws. <b>29 CFR 1981</b>	180
<b>Seaman's Protection Act, 46 U.S.C. §2114 (SPA), as amended by §611 of the Coast Guard Authorization Act of 2010, Public Law 111-281.</b> Protects employees who report to the Coast Guard or another federal agency a violation of a maritime safety law or regulation. The Act also protects seamen who refuse to work when they reasonably believe an assigned task would result in serious injury or impairment of health to themselves, other seamen, or the public.	180
<b>Surface Transportation Assistance Act (STAA).</b> [49 U.S.C §31105] Protects truck drivers and other employees who refuse to violate regulations related to the safety of commercial motor vehicles or who report violations of those regulations. <b>29 CFR 1978</b>	180
<b>Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21).</b> [49 U.S.C. §42121] Protects employees of air carriers and contractors and subcontractors of air carriers who, among other things, report violations of laws related to aviation safety. <b>29 CFR 1979</b>	90

# Whistleblower Complaints (...cont.)

Consumer and Investor Protection Laws	Days to File
<b>Affordable Care Act. 29 U.S.C. §218C (ACA)</b> Protects employees who report violations of any provision of title I of the ACA, including but not limited to discrimination based on an individual's receipt of health insurance subsidies, the denial of coverage based on a preexisting condition, or an insurer's failure to rebate a portion of an excess premium.	180
<b>Consumer Financial Protection Act (CFPA). [12 U.S.C. §5567].</b> Employees are protected for blowing the whistle on reasonably perceived violations of any provision of the Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act or any other provision of law that is subject to the jurisdiction of the Bureau of Consumer Financial, Protection, or any rule, order, standard, or prohibition prescribed by the Bureau.	180
<b>Sarbanes-Oxley Act (SOX). [18 U.S.C. §1514A]</b> Protects employees of certain companies who report alleged mail, wire, bank or securities fraud; violations of the SEC rules and regulations; or violation of federal laws related to fraud against shareholders. The Act covers employees of publicly traded companies and their subsidiaries, as well as employees of nationally-recognized statistical rating organizations. <b>29 CFR 1980</b>	180
<b>Consumer Product Safety Improvement Act (CPSIA). [15 U.S.C. §2087]</b> Protects employees who report to their employer, the federal government, or a state attorney general reasonably perceived violations of any statute or regulation within the jurisdiction of the Consumer Safety Product Safety Commission (CPSC). CPSIA covers employees of consumer product manufacturers, importers, distributors, retailers, and private labelers. <b>29 CFR 1983</b>	180
<b>FDA Food Safety Modernization Act (FSMA) [21 U.S.C. 399d].</b> Protects employees of food manufacturers, distributors, packers, and transporters from reporting a violation of the Food, Drug, and Cosmetic Act, or a regulation promulgated under the Act. Employees are also protected from retaliation for refusing to participate in a practice that violates the Act.	180



## **“Globally Harmonized System” Communication Standard**



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# ***“Right to Understand”***

## **New Hazard Communication Standard “Globally Harmonized System”**

- Right to Know vs. Right to Understand
  - Current standard – “right to know”
    - provides guidance for defining hazards and performing hazard determinations



# “Globally Harmonized System” (...cont.)

- Greatest impact on U.S. based chemical manufacturers and chemical importers, with few mandatory changes slated for other general chemical storage.
- HCS targets chemical manufacturers and importers to ensure their chemical containers will display a label similar to those now used in Europe.
- The GHS-inspired standards will require chemical manufacturers and importers to label chemical containers with 1) a harmonized signal word, 2) GHS pictogram(s), 3) a hazard statement for each hazard class and category, and 4) a precautionary statement.

# “Globally Harmonized System” (...cont.)

- A harmonized signal word is used to indicate the relative level of severity of hazard and alert the reader to a potential hazard on the label. The signal words are “danger,” used for the more severe hazards, and “warning,” which is used for less severe hazards.
- The GHS pictogram is a symbol plus other graphic elements, such as a border, background pattern or color that is intended to convey specific information about the hazards of a chemical. Each pictogram consists of a different symbol on a white background within a red square frame set on a point (i.e., a red diamond).
- A hazard statement is assigned to a hazard class and category to describe the nature of the hazard(s) of a chemical, including, where appropriate, the degree of hazard.

# “Globally Harmonized System” (...cont.)

- A precautionary statement is a phrase that describes recommended measures to minimize or prevent adverse effects resulting from exposure to or improper storage or handling of a hazardous chemical.
- The newly revised HCS outlines eight specific GHS pictograms for use on labels. Each is surrounded by a red border and designed to convey the health and physical hazards of chemicals. A ninth, environmental pictogram may be required by other agencies, but not by OSHA. Environmental hazards are not within OSHA’s jurisdiction.



# “Globally Harmonized System” (...cont.)

- **TIMELINE**

- December 1, 2013: Employers must train employees on the new label elements and MSDS format.
- June 1, 2015: Chemical manufacturers, importers, distributors, and employers must comply with all modified provision of this final rule (exception that distributors may ship products labeled by manufacturers under the old system until December 1, 2015).
- June 1, 2016 (or 2015 – IF YOU ASK CSHO’s!!): Employers must update alternative workplace labeling and hazard communication program as necessary and provide employee training for newly identified physical or health hazards.
- Transition period: Chemical manufacturers, importers, distributors, and employers must comply with the final standard, the current standard, or both.

## GHS Label Elements

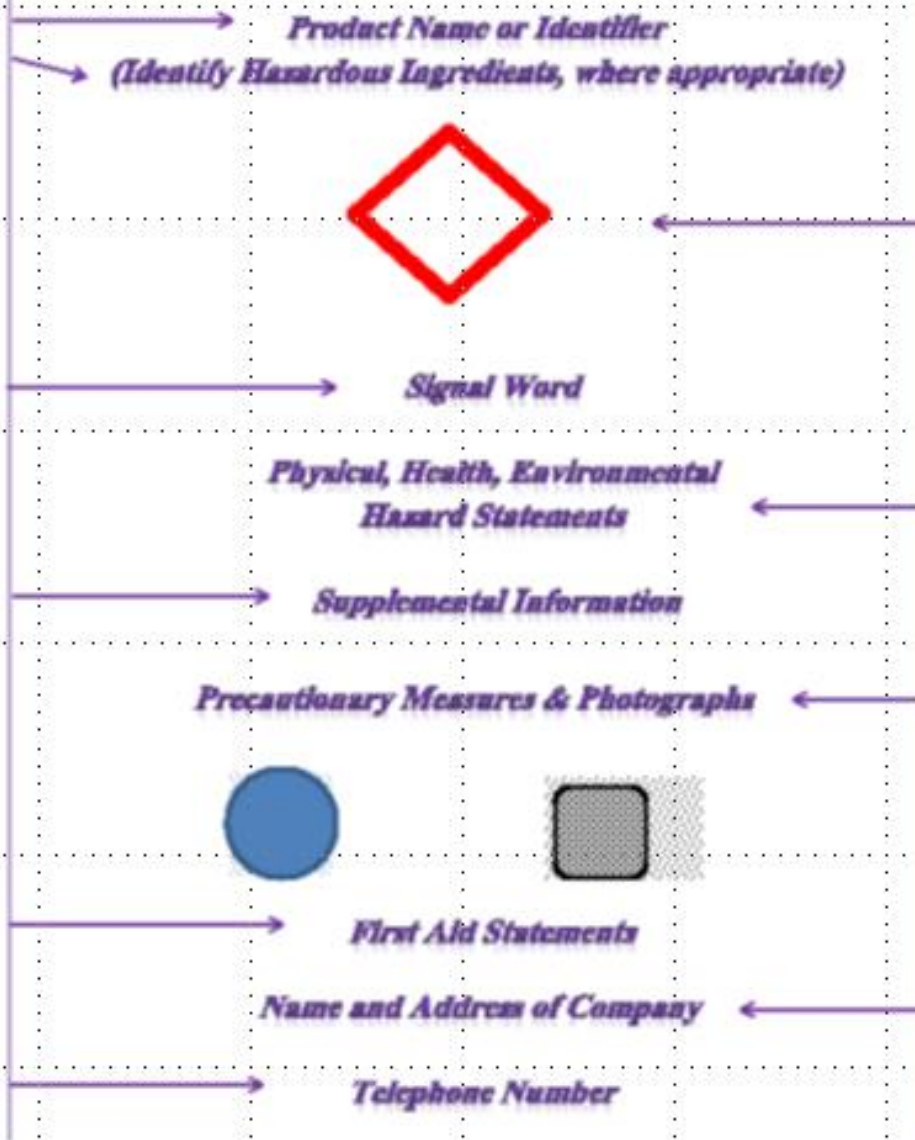






Figure 4.11

ACUTE ORAL TOXICITY - Annex 1					
	Category 1	Category 2	Category 3	Category 4	Category 5
LD <sub>50</sub>	≤ 5 mg/kg	> 5 < 50 mg/kg	<sup>3</sup> 50 < 300 mg/kg	<sup>3</sup> 300 < 2000 mg/kg	<sup>3</sup> 2000 < 5000 mg/kg
Pictogram					No symbol
Signal word	Danger	Danger	Danger	Warning	Warning
Hazard statement	Fatal if swallowed	Fatal if swallowed	Toxic if swallowed	Harmful if swallowed	May be harmful if swallowed

- Other GHS label elements include:
  - **Precautionary Statements and Pictograms:** Measures to minimize or prevent adverse effects.
  - **Product Identifier (ingredient disclosure):** Name or number used for a hazardous product on a label or in the SDS.
  - **Supplier Identification:** The name, address and telephone number should be provided on the label.
  - **Supplemental Information:** Non-harmonized information.



# Safety Incentive Programs



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# Safety Incentives and Incentive Programs May be Illegal

## Disincentives

Section 11(c) of the Occupational Safety and Health Act: Prohibits an employer from discriminating against an employee because the employee reports an injury or illness.

# Disincentives (...cont.)

## OSHA's Position:

Your incentive program might not pass OSHA's "sniff test" if the incentive involved is of sufficient magnitude that failure to receive it might have dissuaded reasonable workers from reporting.

# Disincentives (...cont.)

- If employees do not feel free to report injuries → entire workforce is at risk
- Certain workplace policies could violate the Act by discouraging reporting

# Disincentives (...cont.)

- One such questionable policy: Employer Safety Programs
  - Programs that provide employees an incentive to not report injuries
    - Examples: awarding bonuses to employees that have “not” been injured





# Disincentives (...cont.)

- OSHA identifies the following as policies and practices employers need to change:
- Employers who have a policy of taking disciplinary action against employees who are injured on the job, regardless of the circumstances, OSHA views discipline imposed under such a policy against an employee who reports an injury as a direct violation of Section 11(c) of FRSA.
- An employee who reports an injury or illness is disciplined. Because the act of reporting the injury directly results in discipline, there is a clear potential for violating Section 11(c) of FRSA. The rules cannot penalize workers who do not realize immediately that their injuries are serious enough to report, or even that they are injured at all.

# Disincentives (...cont.)

- OSHA encourages employers to maintain and enforce legitimate workplace safety rules in order to eliminate or reduce workplace hazards and prevent injuries from occurring in the first place. An employer should not, however, attempt to use a work rule as a pretext for discrimination against a worker who reports an injury.
- Some employers establish programs that unintentionally or intentionally provide employees an incentive to not report injuries. For example, an employer might enter all employees who have not been injured in the previous year in a drawing to win a prize, or a team of employees might be awarded a bonus if no one from the team is injured over some period of time. There are better ways to encourage safe work practices, incentives that promote worker participation in safety-related activities such as identifying hazards or participating in investigations of injuries, incidents or near misses.

# Disincentives (...cont.)

- Better ways to encourage safe work practices:
  - Incentives that promote worker participation in safety related activities
  - Providing t-shirt to workers serving on safety and health committees
  - Offering modest rewards for suggesting ways to strengthen health and safety compliance



# Confined Space Entry Rules



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# Three Things to Know About OSHA's New Rule for Confined Space Entry

- In order to protect construction employees who are working in confined spaces, OSHA issued Subpart AA of 29 CFR 1926.

# OSHA's New Rule for Confined Space Entry (...cont.)

## Characteristics of Confined Spaces

- According to OSHA, there are three characteristics of confined spaces:
  - It is big enough for a person to fit his or her entire body.
  - It is restrictive for the person when he or she is entering and exiting.
  - The space is not meant for someone to stay in for a long period of time.

# OSHA's New Rule for Confined Space Entry (...cont.)

- Requirements for Confined Spaces
- As an employer on a construction site with a permit-required confined space, you must comply with various safety requirements. The list of must-haves at work includes:
  - Danger and warning signs that alert workers about the permit-required confined space (PRCS).
  - A program detailing the PRCS.
  - Permits for safe entry operations, which also feature atmospheric test results.
  - Certified documents detailing alternative entry procedures and safety methods for workers in the PRCS.

# OSHA's New Rule for Confined Space Entry (...cont.)

- A professional engineer's written approval to ensure that employees know the provisions and limitations of using specifically designed personnel hoisting systems.
- Safety data sheets (or something along those lines) for workers who are exposed in the PRCs.
- Employee training records to confirm that they've completed confined space training requirements



# OSHA's New Rule for Confined Space Entry (...cont.)

- Training for the New OSHA Rule
- The new rule went into effect on August 3, 2015
- Provide a safety training course that meets OSHA requirements. Employees must be trained before they step foot on a job site.
- All employees – including entry attendants, entry workers and emergency response personnel – must complete the training prior to performing any work-related task.

# New Confined Spaces Standard for Construction

The new confined space standard for construction becomes effective August, 2015.

## WHAT IS A CONFINED SPACE?

A confined space has NO permits required if it's just a confined space:

- Limited means of entry and/or exit,
- Is large enough for a worker to enter it, and
- Is not intended for regular/continuous occupancy.

*Examples include sewers, pits, crawl spaces, attics and boilers.*

# What is a Permit Required Confined Space?

You must fill out the permit and have an attendant (hole watch) for these.

A permit space is a confined space that may have a hazardous atmosphere, engulfment hazard, or other serious hazard, such as exposed wiring, that can interfere with a worker's ability to leave the space without assistance.



# Construction Standards



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# Here are Some of the Key Elements of the Construction Standard:

1. You will have to have a written program, including entry permits;
2. How do I know whether to follow the general industry or construction confined space standard?

If you are doing construction work - such as building a new structure or upgrading an old one - then you must follow the construction confined space standard.

3. I've been following the general industry standard. What is new or different about the construction standard?

# The Five New Requirements Include:

1. More detailed provisions requiring coordinated activities when there are multiple employers at the worksite. This will ensure hazards are not introduced into a confined space by workers performing tasks outside the space. An example would be a generator running near the entrance of a confined space causing a buildup of carbon monoxide within the space.



# The Five New Requirements Include:

2. Requiring a competent person to evaluate the worksite and to identify confined spaces, including permit spaces.
3. Requiring continuous atmospheric monitoring whenever possible.
4. Requiring continuous monitoring of engulfment hazards. For example, when workers are performing work in a storm sewer, a storm upstream from the workers could cause flash flooding. An electronic sensor or observer posted upstream from the worksite could alert workers in the space at the first sign of the hazard, giving the workers time to evacuate the space safely.
5. Allowing for the suspension of a permit, instead of cancellation, in the event of changes from the entry conditions list on the permit or an unexpected event requiring evacuation of the space. The space must be returned to the entry conditions listed on the permit before re-entry.

# Clarifications to General Industry Standard

OSHA has added provisions clarifying existing requirements in the General Industry standard. These include:

- Requiring that employers who direct workers to enter a space without using a complete permit system prevent workers' exposure to physical hazards through elimination of the hazard or isolation methods such as lockout/tagout.
- Requiring that employers who are relying on local emergency services for emergency services arrange for responders to give the employer advance notice if they will be unable to respond for a period of time (because they are responding to another emergency, attending department-wide training, etc.).
- Requiring employers to provide training in a language and vocabulary that workers understand.



# New Definitions

Several terms have been added to the definitions for the construction standard, such as "entry employer" to describe the employer who directs workers to enter a space, and "entry rescue" added to clarify the differences in the types of rescue employers can use.

# Comparing New Construction Standard to the Old Rules

How does the new final rule differ from the rules that previously applied to construction work performed in confined spaces?

The new standard requires employers to determine what kinds of spaces their workers are in, what hazards could be there, how those hazards should be made safe, what training workers should receive, and how to rescue those workers if anything goes wrong.

Do employers have to have a written confined space program?

Yes, if workers will enter permit spaces.

## WHO IS AFFECTED BY THE NEW CONSTRUCTION STANDARD?

All construction employers whose workers may be exposed to confined space hazards.



# Multi-Employer Work Site Issues



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# Multi-employer Worksite Issues

Do I need to do anything if there are permit spaces at the worksite, but my employees will not need to enter the permit space?

Yes, you must take effective steps to prevent your employees from entering the space.

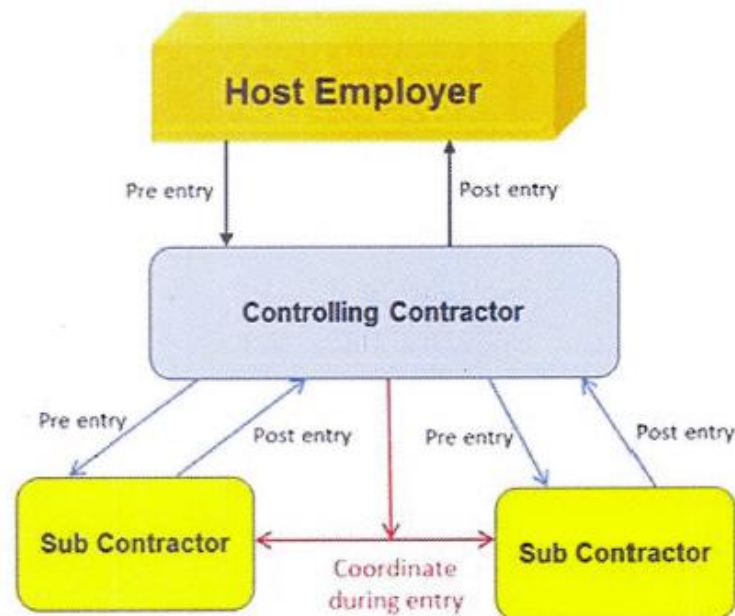
If I hire a contractor (or subcontractor) to do work in a confined space do I have any responsibilities?

Yes, controlling contractors and host employers must discuss spaces on the site and their hazards with entry employers and each other before and after entry.

# Multi-employer Worksite Issues (...cont.)

The required conversations between host employers, controlling contractors, and entry employers are illustrated below.

The diagram shows the information flow and coordination among employers.



# Multi-employer Worksite Issues (...cont.)

The rule makes the controlling contractor, rather than the host employer, the primary point of contact for information about permit spaces at the worksite. The host employer must provide information it has about permit spaces at the worksite to the controlling contractor, who then passes it on to the employers whose employees will enter the spaces (entry employers). Likewise, entry employers must give the controlling contractor information about their entry program and hazards they encounter in the space, and the controlling contractor passes that information on to other entry employers and back to the host. As mentioned above, the controlling contractor is also responsible for making sure employers outside a space know not to create hazards in the space, and that entry employers working in a space at the same time do not create hazards for one another's workers.

If you would like to see the OSHA page with more questions and answers on it here is the link to that website:

<https://www.osha.gov/confinedspaces / faq.html>

Here is the website that OSHA has setup with information and links for the new construction standard on confined spaces:

<https://www.osha.gov/confinedspaces/index.html>

# Policy Concerning Controlling Contractors

“Controlling contractor” means: *“a prime contractor, general contractor, construction manager or any other legal entity, which has the overall responsibility for the construction of the project – its planning, quality and completion.”*

Subpart R contains several specific duties that have been placed on the controlling contractor. They include:

1. Ensuring that the steel erector is provided written notification that the footings, piers and walls have sufficient strength to support the loads imposed during the steel erection process [§1926.752(a)];
2. Ensuring that adequate access roads and storage spaces are provided and maintained for the safe delivery, storage and movement of equipment and pedestrians [§1926.752(c)];
3. Providing written notification to the steel erector of any repair, replacement or modification of the anchor bolts prior to erection of a column [§1926.755(b)(2)];



# Policy Concerning Controlling Contractors (...cont.)

4. Barring other construction processes below steel erection unless sufficient protection is provided for employees below [§1926.759(b)];
5. Choosing either to accept control and responsibility of certain fall protection measures or having them removed [§1926.760(e)];

The standard placed these duties on the controlling contractor because, as the contractor with general supervisory authority over the worksite, it is in the best position to comply with them. None of these provisions require the controlling contractor to direct the individual employees of a subcontractor or supplier.

Current policy makes clear that the primary responsibility for the safety of construction employees rests with an employee's employer. With respect to the general contractor, however, the policy recognizes an overall responsibility to ensure by the exercise of reasonable oversight that the site is free of hazards. This is but one of the general worksite responsibilities of a general contractor. The policy states that:

*The extent of the measures that a controlling employer must implement to satisfy this duty of reasonable care is less than what is required of an employer with respect to protecting its own employees. This means that the controlling employer is not normally required to inspect for hazards as frequently or to have the same level of knowledge of the applicable standards or of trade expertise as the employer it has hired.*

# Controlling Employer and Multi-Employer Worksites

1. General supervisory authority
  - Power to correct or require others
  - By contract or in practice
2. Reasonable care to prevent and detect
  - Lesser extent than for own employees
  - Less frequent inspections
  - Less knowledge of trade standards

# Controlling Contractor

- Factors on how often to inspect:
  - Project scale
  - Nature/pace of work, changing hazards
  - How much known about subcontractor
  - More frequent inspections for unknown or previously non-compliant subcontractor
  - Less frequent inspections for subcontractor with strong safety and health efforts

# Controlling Contractor (...cont.)

- Factors to evaluate reasonable care:
  - Periodic inspections, frequent enough
  - Effective system to correct hazards
  - Effective, graduated enforcement

# Controlling Contractor (...cont.)

- Types of Controlling Employer:
  - Established by Contract
  - Combination of Contract Rights
    - Dispute resolution, schedules, sequencing
  - Architects / Engineers, as above
  - Control without Explicit Contractual Authority

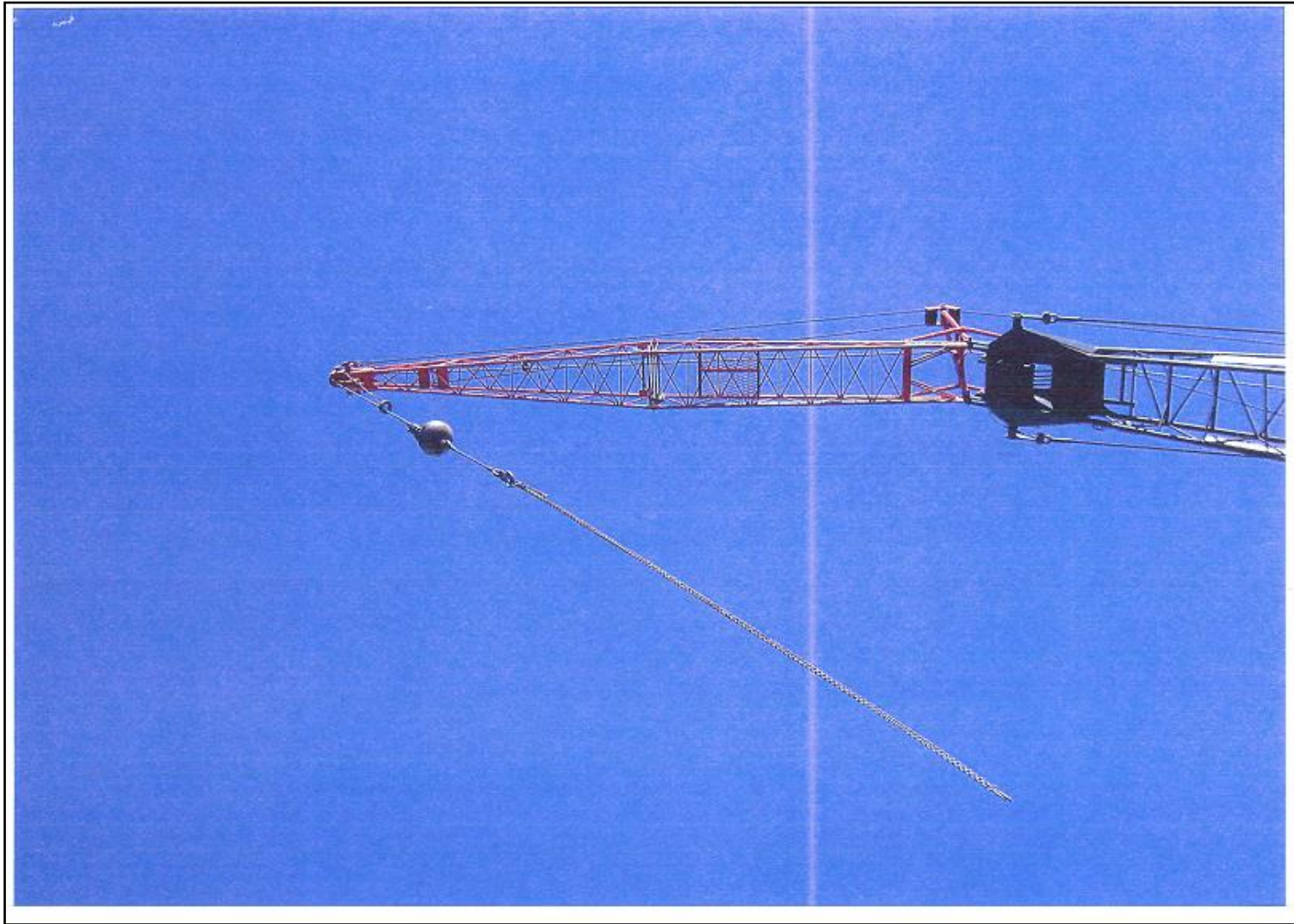
## **Multi-Employer Worksite Example**

### **Bridge Construction Project**

# **Steel Erection Duties**

## **Obligations of General Contractor to Subcontractor**

1. Ensure the steel erector is given written notification that footings, piers and walls have sufficient strength to support loads.
2. Ensure adequate access roads and storage spaces provided for safe movement of equipment and pedestrians.



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# Steel Erection Duties (...cont.)

3. Provide written notification to steel erector of any repair, replacement or modification of anchor bolts prior to erection of column.
4. Bar other construction processes below steel erection unless sufficient protective measures are taken.
5. Choose either to accept control and responsibility of certain fall protection measures or have them removed.





## Other OSHA Standards and Programs



**ATLANTA  
CHATTANOOGA  
NASHVILLE**

# OSHA Standards

## Trench Protection

### 29 CFR Part 1926.650



# Yes, It Happens



# Trench Protection Requirements ≥ 5 Feet Deep

- The sides of the trench or excavation must be protected from “cave-in” by one of the following:
  - Sloping (at the appropriate angle for the soil type or 1 1/2 horizontal : 1 vertical);
  - Shoring (normally with metal and hydraulic approved equipment); or
  - Inserting a trench box in the trench;



# Fall Protection

29 CFR Part 1910 and Part 1926



# Modern-Day Recreation



# Fall Protection Requirements

## 29 CFR Part 1910

- Workers at all worksites must be protected from falls. The first step is identifying the fall hazards on every job. Following identification the hazards must be eliminated and the employees protected. Protection can be provided through the use of various methods and materials, including the following:
  - Guard rail systems
  - Personal fall arrest equipment (body harness, lanyard, etc.)
  - Controlled access zones
  - Safety nets
  - Proper use of ladders

# Personal Protective Equipment (PPE)

- Head Protection
- Eye Protection
- Hearing Protection
- Body Protection
- Respiratory Protection





# Requirements Based on Type of Work and Hazards

- Employers are required to assess the workplace to determine if hazards that require the use of head, eye, face, hand, or foot protection are present or are likely to be present.
- Examples:
  - PPE – 29 CFR Part 1910.132
  - Respirators – 29 CFR Part 1910.134

# Workers' Compensation

- Benefits of a comprehensive safety plan
  1. Fewer workplace injuries
  2. Potential defenses to claims

Certified Drug Free Workplace Program

Failure to follow safety regulations/policies or  
use safety device

# Workplace – Active Shooter Emergency Action

## HOW TO RESPOND

WHEN AN ACTIVE SHOOTER IS IN YOUR VICINITY

### 1. EVACUATE

- Have an escape route and plan in mind
- Leave your belongings behind
- Keep your hands visible

### 2. HIDE OUT

- Hide in an area out of the shooter's view
- Block entry to your hiding place and lock the doors
- Silence your cell phone and/or pager

### 3. TAKE ACTION

- As a last resort and only when your life is in imminent danger
- Attempt to incapacitate the shooter
- Act with physical aggression and throw items at the active shooter

**CALL 911 WHEN IT  
IS SAFE TO DO SO**

## HOW TO RESPOND

WHEN LAW ENFORCEMENT ARRIVES

- Remain calm and follow instructions
- Put down any items in your hands (i.e., bags, jackets)
- Raise hands and spread fingers
- Keep hands visible at all times
- Avoid quick movements toward officers such as holding on to them for safety
- Avoid pointing, screaming or yelling
- Do not stop to ask officers for help or direction when evacuating

## INFORMATION

YOU SHOULD PROVIDE TO LAW ENFORCEMENT OR 911 OPERATOR

- Location of the active shooter
- Number of shooters
- Physical description of shooters
- Number and type of weapons held by shooters
- Number of potential victims at the location

# Workplace – Active Shooter Emergency Action (...cont.)

COPING	PROFILE
<b>WITH AN ACTIVE SHOOTER SITUATION</b> <ul style="list-style-type: none"><li>• Be aware of your environment and any possible dangers</li><li>• Take note of the two nearest exits in any facility you visit</li><li>• If you are in an office, stay there and secure the door</li><li>• Attempt to take the active shooter down as a last resort</li></ul> <p><i>Contact your building management or human resources department for more information and training on active shooter response in your workplace.</i></p>	<b>OF AN ACTIVE SHOOTER</b> <p>An active shooter is an individual actively engaged in killing or attempting to kill people in a confined and populated area, typically through the use of firearms.</p>
	<b>CHARACTERISTICS</b> <b>OF AN ACTIVE SHOOTER SITUATION</b> <ul style="list-style-type: none"><li>• Victims are selected at random</li><li>• The event is unpredictable and evolves quickly</li><li>• Law enforcement is usually required to end an active shooter situation</li></ul>
<b>CALL 911 WHEN IT IS SAFE TO DO SO</b>	



ATLANTA  
CHATTANOOGA  
NASHVILLE

# OSHA: Focusing on Safety and Health Compliance



# **“CULTURE” is Everything**

Survey of Most Common Excuses





**"The safety guys are  
\*\*\*holes and bullies."**





**"EHS compliance makes everything  
more difficult and time-consuming."**





**"Why do we have to do this  
training every year?"**









**Safety makes it "more  
difficult to do my job."**



**"More rules from the  
government."**

**"It takes too much  
time!"**

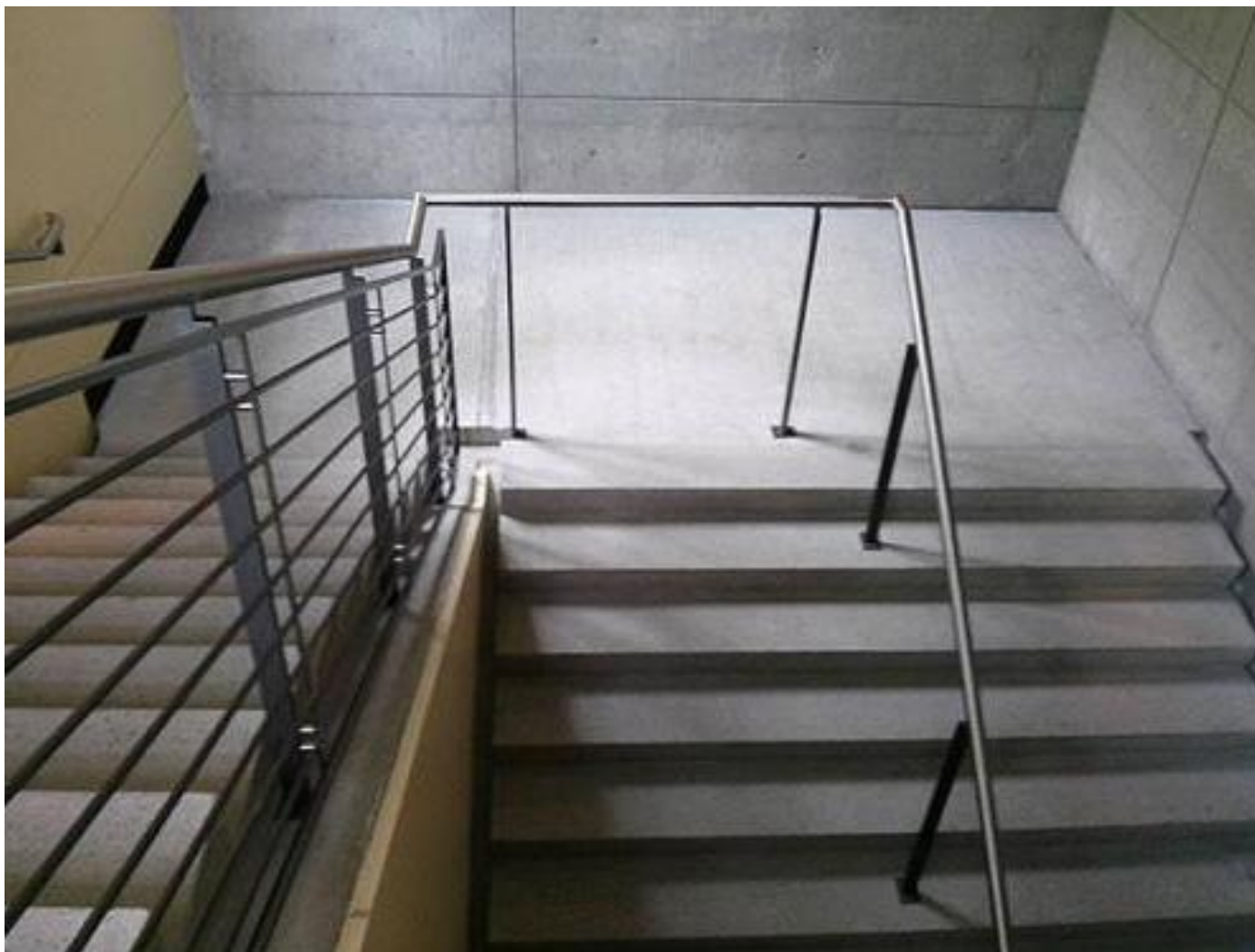


















# Reactive v. Proactive

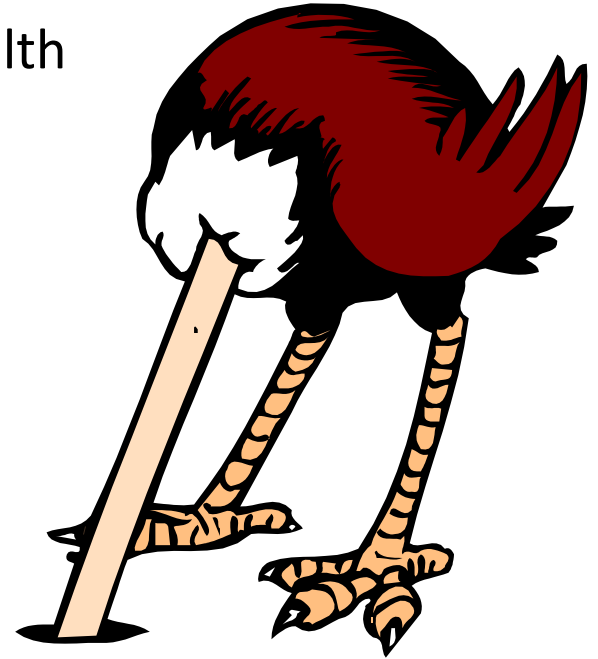


# The Reactive Approach



# The Reactive Approach (...cont.)

- “Wait and See”
- Failure to create and enforce employee health and safety program
- Failure to conduct routine scheduled inspections
- Failure to conduct appropriate employee training
  - Monthly training
  - Daily “Tool Box” talks
- Failure to utilize an outside consultant to ensure a “fresh” look/perspective
- Even companies that employ safety managers can miss important details!





# The Costs of Being Reactive

- A national chain pharmacy/drug store in New York was recently cited for one willful safety violation.
- The store was cited for blocking an emergency exit.
- This single, willful violation carried a proposed fine of **\$60,500.**

# The Costs of Being Reactive (...cont.)

- In Chattanooga, TOSHA issued 6 citations to a subcontractor at a construction jobsite.
  - Workers were not properly trained = **\$1,000**
  - No safe way to enter and exit the excavation = **\$1,500**
  - Employees exposed to hazardous areas without proper precautions in place = **\$6,000**
  - Excavation was not properly trenched/protected = **\$4,500**

Total amount of fines= **\$13,000**



A man relaxes during his lunch break on a steel beam atop the RCA Building at Rockefeller Center, New York, September 1932

# The Proactive Approach



# The Proactive Approach (...cont.)



- Creating and enforcing a health and safety plan
  - Conducting routine compliance inspections
  - Seeking professional guidance/fresh perspectives
  - Developing and implementing training programs
- Proposing solutions and implementing them in a timely manner
  - Routine follow up on implemented plans
  - Documenting training, inspections, program attendance compliance

# The Benefits of Being Proactive

- A healthy and safe workforce is productive
- Gain a competitive advantage
- Compliance
- Avoid fines for non-compliance
- Avoid legal costs from injury suits
- Avoid legal costs from post-violation enforcement matters

# The Benefits of Being Proactive (...cont.)

- Less lost time due to injuries
- Lower Workers Compensation premiums
- Lower experience modifier
- Quality control
- Drug-free workplace
- Financial institutions evaluate borrowers by their history of fines, penalties, and violations (credit risk)

# **Financial Institutions customarily evaluate their borrowers based on historical benchmarks and documentation such as:**

- Financial Statements and Related Footnotes
- Appraisals
- Environmental Site Assessments
- Business Plans

The health and safety behavior and compliance record of a borrower is an additional and important metric, which lenders frequently overlook.

Lenders should pay close and careful attention to the housekeeping, history of fines, penalties and inspections and injury/illness history of existing and potential borrowers.

A borrower who demonstrates “good behavior” can be a substantially safer credit risk than a borrower with a poor health and safety track record.



# Can You Spot the Safety Hazard?



# Can You Spot the Safety Hazard?





# Gravedigger Partially Buried at Long Island Cemetery



# OSHA Federal Penalty Schedule

## OSHA Penalties

Below are the penalty amounts adjusted for inflation as of Jan. 2, 2018.

Type of Violation	Penalty
Serious Other-Than-Serious Posting Requirements	\$12,934 per violation
Failure to Abate	\$12,934 per day beyond the abatement date
Willful or Repeated	\$129,336 per violation

# OSHA Federal Penalty Schedule

## (...cont.)

- **Other-Than-Serious Violation** — A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm. OSHA may assess a penalty from \$0 to \$1,000 for each violation. The agency may adjust a penalty for an Other-Than-Serious violation downward by as much as 95 percent, depending on the employer's good faith (demonstrated efforts to comply with the Act), history of previous violations, and size of business.
- **Serious Violation** -- A violation where there is a substantial probability that death or serious physical harm could result. OSHA assesses the penalty for a serious violation from \$1,500 to \$7,000 depending on the gravity of the violation. OSHA may adjust a penalty for a serious violation downward based on the employer's good faith, history of previous violations, and size of business.
- **Willful Violation** -- A violation that the employer intentionally and knowingly commits. The employer is aware that a hazardous condition exists, knows that the condition violates a standard or other obligation of the Act, and makes no reasonable effort to eliminate it. OSHA may propose penalties of up to \$70,000 for each willful violation. The minimum willful penalty is \$5,000. When a willful violation is deemed to be 'egregious' than OSHA can apply willful violation limits for every violation found or for every employee exposed to hazards.
- An employer and responsible management individuals convicted in a criminal proceeding of a willful violation of a standard that has resulted in the death of an employee may be fined up to \$250,000 for individuals or \$500,000 for a corporation or imprisoned up to 6 months, or both. A second conviction doubles the possible term of imprisonment.
- **Repeated Violation** -- A violation of any standard, regulation, rule, or order where, on reinspection, a substantially similar violation is found and the original citation has become a final order. Violations can bring a fine or up to \$70,000 for each such violation within the previous 3 years. To calculate repeated violations, OSHA adjusts the initial penalty for the size and then multiplies by a factor of 2, 5, or 10 depending on the size of the business.
- **Failure-to-Abate** -- Failure to correct a prior violation may bring a civil penalty of up to \$7,000 for each day that the violation continues beyond the prescribed abatement date.



# Company With Less Than 100 Employees Fined \$1.9 Million

## ***CITED 77 TIMES IN 4 YEARS!***

### SAFETY AND HEALTH COMPLIANCE MANAGEMENT

**OSHA** Occupational Safety & Health Administration  
U.S. Department of Labor



### News Release

U.S. Department of Labor

Release Number: 11-788-ATL

June 14, 2011

Contact: Michael Wald Michael D'Aquino

Phone: 404-562-2078 404-562-2076

Email: [wald.michael@dol.gov](mailto:wald.michael@dol.gov) [d'aquino.michael@dol.gov](mailto:d'aquino.michael@dol.gov)

**US Labor Department's OSHA proposes more than \$1.9 million in fines against Alabama lumber mill for egregious and other safety violations**

**PHENIX CITY, Ala.** – The U.S. Department of Labor's Occupational Safety and Health Administration today proposed penalties of \$1,939,000 to the Phenix Lumber Co. and its principal, John M. Dudley, for egregious and other safety violations, including exposing employees to amputation and fall hazards.

Prior to these citations, Phenix Lumber had been cited 77 times by OSHA for serious safety and health violations since 2007.

"Phenix Lumber continues to put workers at risk by choosing not to implement safety measures that would prevent serious injuries to their employees," said Secretary of Labor Hilda L. Solis. "Employers have a responsibility to keep their workers safe and healthy. One worker injured on the job is one too many."

OSHA began an inspection on Dec. 15, 2010, in response to a complaint that employees working in the planer mill were exposed to amputation hazards while maintaining, cleaning and clearing jams on pieces of machinery that did not have their energy sources locked out to prevent their unexpected start up. Two months later, OSHA received a second complaint that an employee had suffered a partial finger amputation while clearing a piece of machinery that had not been locked out. At the opening of an inspection following the second complaint, the compliance officer learned of another employee who had just suffered a severe hand injury while working on unguarded machinery. Phenix Lumber had been cited numerous times during the past four years for allowing employees to work on unguarded machinery while it was operating.

"This situation reflects a systemic problem with the way this company approaches safety

Safety and Health Compliance Management \* 4040 Igou Crossing Dr \* Chattanooga, Tennessee  
Telephone: (423) 266-6721 \* Cell Phone: (423) 802-7162

### SAFETY AND HEALTH COMPLIANCE MANAGEMENT

and demonstrates an egregious disregard for workers' safety and health," said Assistant Secretary of Labor for OSHA Dr. David Michaels.

OSHA has issued Phenix Lumber 13 citations for 24 willful violations, including failure to properly shut down and lock out 13 pieces of machinery before employees were required to perform tasks such as clearing jams and cleaning. These failures exposed employees to amputation hazards, as well as to the possibility of being caught between or struck by pieces of the machinery and falling lumber. The employer also failed to train 11 employees who performed this work on the hazards and how to shut down and lock out the machinery so that they could perform their tasks safely. OSHA proposed the maximum \$70,000 penalty for each violation, totaling \$1,680,000.

Citations for three additional willful violations allege that a worker was exposed to fall hazards while working from the top of a machine, locks were not issued to employees as required by the lockout standard, and the company failed to follow established lockout/tagout procedures. These citations carry additional penalties of \$70,000 each, for a total of \$210,000.

A willful violation is one committed with intentional knowing or voluntary disregard for the law's requirements, or with plain indifference to worker safety and health. OSHA may propose separate penalties for distinct willful violations of the same OSHA standard where one or more of the seven criteria are met as identified in the OSHA directive "Handling of Cases to be Proposed for Violation-By-Violation" (compliance directive 02-00-080). The criteria include that the employer's conduct taken as a whole amounts to clear bad faith in the performance of duties under the Occupational Safety and Health Act.

One citation for a repeat violation with a \$35,000 fine was issued for failing to place machine guards on seven chains and sprockets. A violation is "repeated" if the employer previously was cited for a substantially similar condition, and the citation is a final, affirmed order of the independent Occupational Safety and Health Review Commission. This time is the third within three years that Phenix Lumber has been cited for failing to guard this type of equipment.

Citations for two serious violations, each with a maximum proposed penalty of \$7,000, were issued for failing to guard a pinch point at a hydraulic pusher plate, which exposed employees to amputation hazards and caused one of the injuries; and to ensure that employees performing lockout/tagout tasks applied and removed their own locks. A serious violation occurs when there is substantial probability that death or serious physical harm could result from a hazard about which the employer knew or should have known.

Copies of the citations are available at  
<http://www.osha.gov/dep/citations/MDLGPhenixLumber315135954.pdf>\* and  
<http://www.osha.gov/dep/citations/MDLGPhenixLumber315111930.pdf>\*.

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### SAFETY AND HEALTH COMPLIANCE MANAGEMENT

OSHA has proposed that the employer be included in the agency's Severe Violators Enforcement Program. Initiated in 2010, the program is intended to focus on employers that endanger workers by committing willful, repeat or failure-to-abate violations in one or more of the following circumstances: a fatality or catastrophe; industry operations or processes that expose workers to severe occupational hazards; exposure to hazards related to the potential releases of highly hazardous chemicals; and all instance-by-instance enforcement actions under compliance directive 02-00-080. Inclusion in the program subjects employers to mandatory follow-up inspections; increased company/corporate awareness of OSHA enforcement; and, where appropriate, corporate-wide agreements, enhanced settlement provisions and federal court enforcement under Section 11(b) of the OSH Act.

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# Who is Covered Under OSHA?

*...It just takes one employee.*

- All employers and employees in the 50 states, District of Columbia, Puerto Rico, and U.S. territories except:
  - Self-Employed Persons Farms at which only immediate members of the farmer's family are employed
  - Working conditions regulated by other federal agencies under other federal statutes



# Who is Covered Under TOSHA?

- All private and public-sector employees in Tennessee  
**except:**
  - Railroad Employees
  - Federal Employees
  - Maritime Employees
  - Private Contractors working at Government owned/operated facilities
  - TVA Employees and Contractors operating on TVA sites
  - US Postal Service Employees





# Increasing Fines and Penalties

- OSHA fines are increasing and violations stay on employer's record for longer (3 years v. 5 years)
- TOSHA conducted 1,808 compliance inspections during the 2014 fiscal year and issued **6,852** citations
- Last year, Tennessee regulators imposed **\$2.6 million** in penalties

# Increasing Fines and Penalties (...cont.)

- For the first time since 1990, OSHA is significantly increasing the amount of its fines.
- The Bipartisan Budget Act of 2015 contains a “catch-up” adjustment.
- The effect of this adjustment is simple: Penalties and caps nearly doubled in 2016 and continue to increase year-over-year thereafter.

# Employers Beware: OSHA Fines Are on the Rise for the First Time in Twenty-Five Years

## OSHA Adjusts Penalty Amounts for 2018

On Jan. 2, civil [penalty amounts](#) for violations of workplace safety and health standards increased by two percent from last year. In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Department of Labor is required to adjust penalties for inflation each year. New penalties for willful and repeat violations are \$129,336 per violation; serious, other-than-serious, and posting requirements are \$12,934 per violation; and failure to correct violations is \$12,934 for each day the condition continues.

# Total Case Incidence Rates (TCIR)

- The TCIR of nonfatal occupational injuries and illnesses for Tennessee private industry fell from 3.3 in 2013 to 3.2 in 2014.
- There was a similar decline in all industries including state and local government where the incidence rate fell from 3.4 in 2013 to 3.3 in 2014.
- Incidence rates in manufacturing decreased from 4.1 in 2013, to 3.8 in 2014.
- Incidence rates in construction increased from 3.2 in 2013 to 3.9 in 2014, but the Days Away Restricted Time (DART) rate fell from 2.0 to 1.7.

# TOSHA's Consultative Services

- Free service
- In 2014, TOSHA completed 414 consultative visits and discovered **3,375** hazards
- No fines, penalties, or citations were issued



# TOSHA's Consultative Services (...cont.)

- TOSHA offers a consultative service to employers who wish to improve their workplace safety and health.
- TOSHA's Consultative Section provides a confidential service without fees, out-of-pocket expense, or penalty/citation to employers. All that is required of TOSHA Consultation participants is that employers agree to correct any violations identified.
- Consultation is geared towards smaller employers, those with 250 or fewer employees on-site and 500 or fewer employees corporate wide in the U.S.

# TOSHA's Consultative Services (...cont.)

- Once a Consultation visit is requested, TOSHA's consultants will make contact to schedule a convenient time for an on-site visit. During the on-site visit the consultant will provide examples and guidance of how to correct, prevent, and reduce hazards. Examples of written programs and information on developing and improving workplace training can also be provided.

# TOSHA's Consultative Services (...cont.)

- The consultant will provide a formal written report of their findings. The findings of the report are confidential and not shared with or provided to TOSHA enforcement.
- Industrial hygiene services, including air contaminant and noise sampling are also available at no direct cost to the employer.



# How Far Does OSHA's Reach Extend?

## OSHA Investigating the Death of an Exotic Dancer in Cleveland, Ohio

- OSHA investigated the death of an exotic dancer who died after tumbling over a second-floor railing and falling 15 feet while working at a strip club in Cleveland.
- Employee vs. Independent Contractor – OSHA Jurisdiction

# A Real-Life Example



# WORKPLACE CRISIS MANAGEMENT

## Anatomy of an OSHA Investigation

- A crew is working 100 feet in the air on an interstate highway bridge construction project when two members of the 25-person crew fall to the ground and die on impact.
- The remaining crew members are traumatized and now in a dangerous location. A call goes out to 9-1-1 as crew members rush to the aid of their coworkers only to realize that they have perished.
- Paramedics and police arrive on the scene. Crime scene tape is placed around the construction area and around the impact area 100 feet below. Detectives arrive as paramedics try to revive the two deceased workers. The area is immediately determined to be a crime scene and a homicide investigation is opened.

# Anatomy of an OSHA Investigation (...cont.)

- The employer complies with its 8-hour notification obligation to OSHA and calls to report the fatalities. Detectives are already interviewing workers and an OSHA investigation team of two investigators arrives and begins informal employee interviews, photographing the scene and making notes.
- The employer's job site supervisor contacts corporate headquarters and advises that two investigations are under way. Management shows up only to receive requests from OSHA for OSHA 300 logs, safety assessments and job site safety plans, written safety programs covering multiple topics, such as fall protection, general safety, lock-out tag-out, equipment inspection, blood borne pathogens, first aid, etc. The employer is also asked to turn over equipment records, equipment owner's manuals, equipment maintenance logs, safety assessments and more. The employer has no idea what or how much of this it is obligated by law to provide.

# Anatomy of an OSHA Investigation (...cont.)

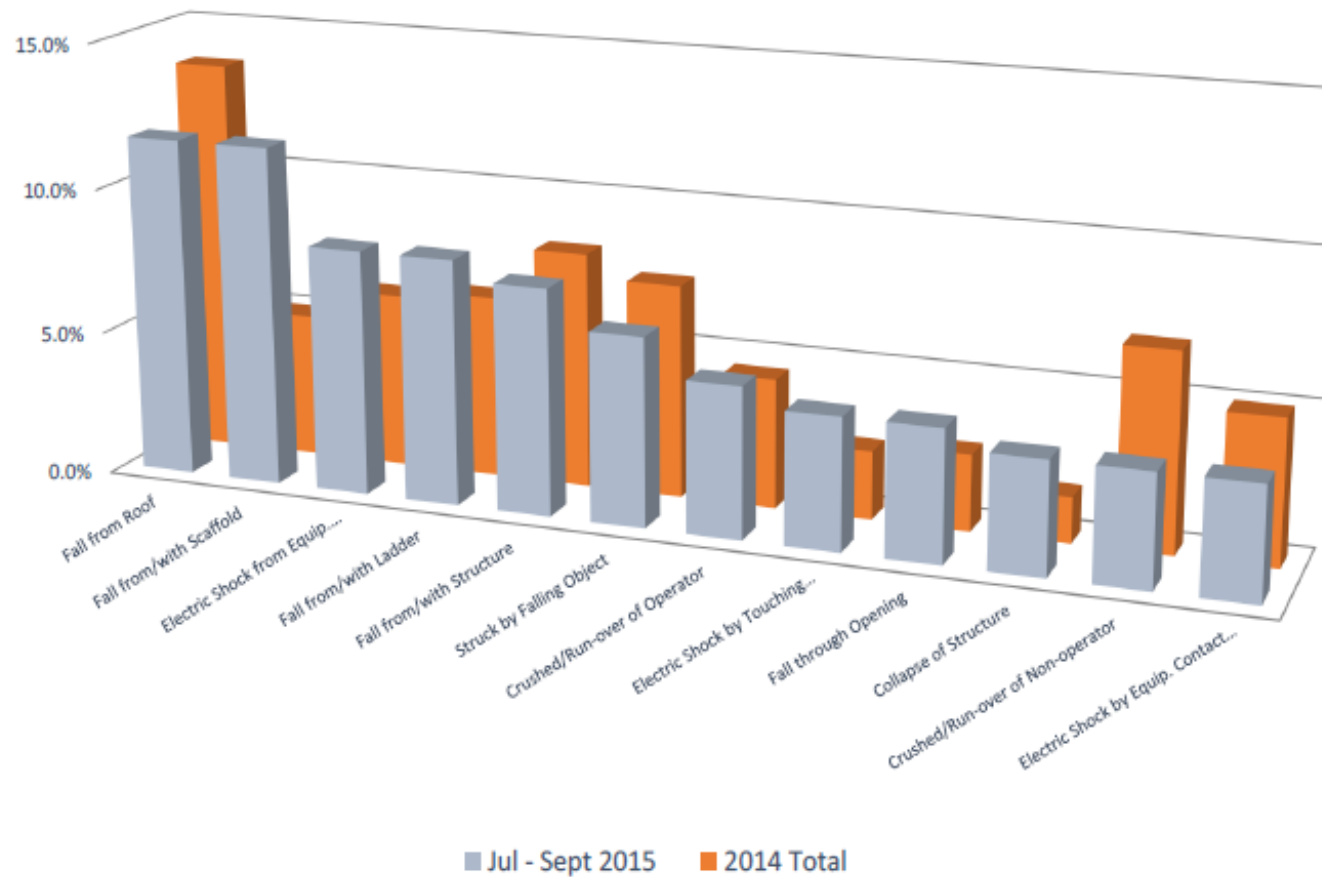
- Coworkers on the scene call family members of the two victims. Family members rush to the scene and hysterically try to gain access. Their overwhelming grief adds to the confusion as they are denied access but are close enough to see the bodies of their loved ones concealed by two white sheets.
- The press has also shown up and there are newspaper reporters, television reporters with video cameras running and live remote trucks recording and broadcasting the entire situation.
- Now, OSHA commences an opening conference with the employer and demands to interview hourly and managerial employees. The employer has no idea how to manage this process.

# Anatomy of an OSHA Investigation (...cont.)

- In the meantime, the families of the deceased workers have been approached by personal injury attorneys who have also, at this point, come to the scene to perform their own uncontrolled investigation.
- The employer's insurance company has dispatched loss control and claims adjusting personnel to the scene.
- The victims' personal injury attorneys are quickly hired and are now demanding to inspect and take possession of certain evidence at the scene. An argument over custody of evidence ensues among the employer, law enforcement, OSHA, the insurance company, the plaintiffs' lawyers and the families of the victims. Petitions for injunctive protection are filed in State Court.
- Your job is to manage the events listed above as they occur simultaneously and in real time.

**...Questions???**

**Top Fatal Construction Events by Percent Distribution  
(July to September 2015 and 2014 Total )**





# How OSHA Can Initiate an Inspection

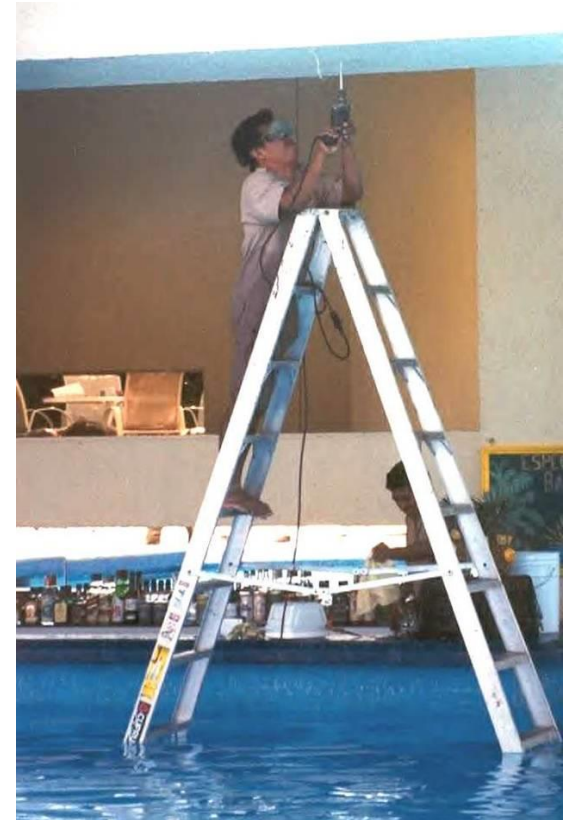
There are four (4) scenarios where OSHA can implement an inspection of an employer's premises or worksite. They include the following:

1. OSHA special emphasis program on a particular safety issue.
2. A complaint lodged to OSHA by a current employee, former employee or a member of the public.
3. A reportable incident such as a fatality, in-patient hospitalization, loss of an eye or amputation.
4. A random inspection.



# What to Expect from an OSHA or TOSHA Compliance Visit

- Visit will be unannounced
- An opening conference to outline the purpose and expectations (scope/warrant)
- “Walkaround” Inspection (“Plain View”)
  - Environmental samples, photos and videos of the worksite
- Inspection of records related to your safety and health programs



# What to Expect from an OSHA or TOSHA Compliance Visit (...cont.)

- Formal and informal (5 minute) interviews (hourly v. manager)
- Including employee knowledge of health and safety standards and Programs (walk-up to random employees!)
- Warnings about non-compliance
- Potential citations for violations of OSHA/TOSHA standards
- Follow-up inspections to assess any Abatement orders



# Employer's Rights During an OSHA/TOSHA Inspection

- Request identification from Compliance Officers
- Request an inspection warrant or agree on scope - - No Trespassing - -
- Request the reason for the Compliance Officer's visit
- Request an informal conference after the citation (if any) is received
- Request assurance of the confidentiality of trade secrets and mark applicable documents provided to inspector as Proprietary-Confidential.



**RESTRICTED AREA**

\*\*\*\*\*

**VISITORS MUST BE  
ACCOMPANIED BY AN  
AUTHORIZED MANAGERIAL  
COMPANY REPRESENTATIVE**

\*\*\*\*\*

**NO TRESPASSING**

# OSHA'S Typical Top 10 Citation List Highlights

1. Fall Protection
2. Hazard Communication
3. Scaffolding
4. Respiratory Protection
5. Lockout/Tagout
6. Powered Industrial Trucks
7. Electrical – Wiring Methods
8. Ladders
9. Machine Guarding
10. Electrical, General Requirements

# Most frequently cited violations:

OSHA's 2016 TOP TEN

Most Frequently Cited Violations for **Construction**

- |                             |                                    |
|-----------------------------|------------------------------------|
| 1. Fall Protection          | 6. Aerial Lifts                    |
| 2. Hazard Communication     | 7. Excavation – Protective Systems |
| 3. Scaffolding              | 8. General Duty                    |
| 4. Fall Protection Training | 9. Hardhats                        |
| 5. Ladders                  | 10. Excavations                    |



# Most frequently cited violations:

## OSHA's 2016 TOP TEN

### Most Frequently Cited Violations for **Manufacturing**

- |                                |  |
|--------------------------------|--|
| 1. Hazard Communication        | 6. Medical and First Aid                   |
| 2. Machine Guarding            | 7. Eye & Face Protection                   |
| 3. Energy Control Procedures   | 8. Respiratory Protection                  |
| 4. Portable Fire Extinguishers | 9. Mechanical Power-Transmission Apparatus |
| 5. General Duty                | 10. OSHA 300 Log                           |





# Most Severe Violations

- Willful: Intentional knowing, voluntary disregard, or indifference to worker safety
- Repeat: Employers who were previously cited for the same/similar violations
- Serious: Substantial probability that death or serious injury could result from a hazard that the employer knew or should have known
- Failure-to-Abate: Failure to correct a prior violation after the abatement period expired



# OSHA's Severe Violator Enforcement Program

- OSHA's toughest regulations for non-compliant employers
- Penalties may exceed \$124,000 for **EACH** violation
- Willful violations may be punishable by imprisonment



# Written Workplace Safety Plans\*

- Bloodborne Pathogens
- Confined Space
- Emergency Action
- Fall Protection
- Fire Safety
- Forklift Safety
- General Safety
- Hazard Communication
- Hearing Conservation
- Lockout/Tagout
- Respiratory Protection
- Workplace Security

## ALSO... WORKSITE-SPECIFIC HAZARD ASSESSMENTS!!!

\* This is a list of the most common plans. It is not intended to cover all possible plans.

# OSHA Matters May Give Way to Criminal Liability

- The Department of Justice's "Worker Endangerment Initiative" significantly expands the potential for criminal liability in OSHA cases.



"On an average day in America, 13 workers die on the job, thousands are injured and 150 succumb to diseases they obtained from exposure to carcinogens and other toxic and hazardous substances while they worked. **Given the troubling statistics on workplace deaths and injuries, the Department of Justice is redoubling its efforts to hold accountable those who unlawfully jeopardize workers' health and safety.**"

--Deputy Attorney General Sally Quillian Yates

<https://www.justice.gov/enrd/worker-endangerment>

## Managers May Face Personal Liability and Criminal Prosecution

### 2 supervisors to pay \$450K in decapitation of 2 workers

Two former supervisors have agreed to pay \$450K to the families of two workers who were decapitated in a boiler explosion. If they don't pay within a year's time, they're going to jail.

Former plant manager Carl Richardson and former maintenance supervisor Roy Faulkinbury both pleaded no contest to two felony charges in connection with the March 19, 2009, explosion at Solus Industrial Innovations, a plastics manufacturer in Rancho Santa Margarita, CA.

The explosion killed Jose Jimenez, 51, and Isidro Echeverria, 34. Two other employees were injured. Echeverria's body was found by his brother who also worked at the plant. The blast also blew the roof off the building. The plant never re-opened.

The Orange County District Attorney's Office says the boiler blew up because the company had been trying to save money. As a result, it paid a high cost (loss of employee lives) due to a lack of safety.

In 2007, Solus relocated from Pennsylvania to California. The DA's office says the company intentionally discarded a commercial boiler to avoid the cost and permitting requirements of proper installation.

According to grand jury testimony, the two supervisors decided not to use a commercial boiler because it would require a gas line. Instead, they bought a \$500 residential water heater from a consumer hardware store. The water heater was used to melt plastic as part of Solus' manufacturing process.

The DA's office says the overworked water heater developed problems, including leaks and a blown pressure relief valve. The prosecutors say despite those problems, plant supervisors never got the heater fixed or inspected and instead had employees try to keep it running.

Prosecutors have agreed that if Richardson and Faulkinbury pay the victims' families within 90 days and perform one-third of their community service within a year, a judge will reduce their charges to misdemeanors and sentence them to probation.

If they don't comply, they will be sentenced to three months in jail.

**The DA's office also filed a civil lawsuit against Solus, saying the company knowingly maintained an unsafe work environment that resulted in the two deaths. That case is still pending.**

The civil lawsuit seeks penalties and restitution in an amount to be determined at trial.

# Lying to OSHA Inspector Can Result in Criminal Charges

- UP TO 25 YEARS IMPRISONMENT!
- In 2013, while an Alabama roofing contractor was working on a project, three employees sustained serious injuries.
- When OSHA inspectors investigated the accident scene, the contractor told an OSHA inspector that he had been present on the job site on the day of the accident and that he had provided the workers with fall protection equipment approximately five days prior to the accident.

# Lying to OSHA Inspector (...cont.)

- The contractor had not obtained and provided fall protection equipment to employees until five days after the accident, coincidentally the same day that the OSHA inspectors initiated their investigation.
- On April 6, 2015, the DOJ charged the contractor with making false statements and lying to OSHA inspectors in connection with their investigation. Ultimately, the contractor pleaded guilty to one count of making false statements to an OSHA inspector. He was sentenced to three years of supervised probation and 30 hours of community service.





The photos of Charles C. Ebbets, shot on the construction of GE Building, 1932

# Miller & Martin PLLC

Miller & Martin attorneys can work with you to develop plans for health, safety and environmental compliance at your worksites and facilities.\*

*\* For attendees at today's Seminar, we will provide the first hour of consultation free of charge.*

# Mike Mallen

- 30 years of “boots-on-the-ground” experience as in-house counsel and owner and operator of heavy manufacturing businesses
- Assists clients with health, safety and environmental enforcement and regulatory matters at the local, state and federal levels
- Testified before U.S. House of Representatives on environmental regulatory issues





# Another Pair of Eyes and a Fresh Look

Why You Should Focus  
and Refocus on Safety  
and Health  
Compliance

**Mike Mallen**

**Miller & Martin PLLC**



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